FEDERAL REGISTER

VOLUME 14 NUMBER 249

Washington, Wednesday, December 28, 1949

TITLE 3—THE PRESIDENT

PROCLAMATION 2867

CARRYING OUT THE ANNECY PROTOCOL OF TERMS OF ACCESSION TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, DATED OCTOBER 10, 1949, AND SUPPLEMENTING THE PROCLAMATIONS OF DECEMBER 16, 1947, AND JANUARY 1, 1948

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

1. WHEREAS, pursuant to the authority vested in the President by the Constitution and the statutes, including section 350 of the Tariff Act of 1930, as amended by section 1 of the act of June 12, 1934, by the joint resolution approved June 7, 1943, and by sections 2 and 3 of the act of July 5, 1945 (ch. 474, 48 Stat. 943, ch. 118, 57 Stat. 125, ch. 269, 59 Stat. 410 and 411), the period for the exercise of the said authority under section 350 having been extended by section 1 of the said act of July 5, 1945 (ch. 269, 59 Stat. 410), until the expiration of three years from June 12, 1945, on October 30, 1947, the President entered into a trade agreement with the Governments of the Commonwealth of Australia, the Kingdom of Belgium, the United States of Brazil, Burma, Canada, Ceylon, the Republic of Chile, the Republic of China, the Republic of Cuba, the Czechoslovak Republic, the French Republic, India, Lebanon, the Grand Duchy of Luxemburg, the Kingdom of the Netherlands, New Zealand, the Kingdom of Norway, Pakistan, Southern Rhodesia, Syria, the Union of South Africa, and the United Kingdom of Great Britain and Northern Ireland, which trade agreement consists of the General Agreement on Tariffs and Trade and the related Protocol of Provisional Application thereof, together with the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, which authenticated the texts of the said general agreement and the said protocol (Treaties and other International Acts Series 1700);

2. WHEREAS by Proclamation No. 2761A of December 16, 1947 (3 CFR., 1947 Supp., p. 71), the President proclaimed such modifications of existing duties and the other import restrictions of the United States of America and such continuance of existing customs or excise treatment of articles imported into the United States of America as were then found to be required or appropriate to carry out the said trade agreement on and after January 1, 1948, which proclamation has been supplemented by Proclamation No. 2769 of January 30, 1948 (3 CFR., 1948 Supp., p. 21), Proclamation No. 2782 of April 22, 1948 (3 CFR., 1948 Supp., p. 34), Proclamation No. 2784 of May 4, 1948 (3 CFR., 1948 Supp., p. 38), Proclamation No. 2790 of June 11, 1948 (3 CFR., 1948 Supp., p. 46), (supplemented by Proclamation No. 2809 of September 7, 1948 (3 CFR., 1948 Supp., p. 75)), Proclamation No. 2791 of June 12, 1948 (3 CFR., 1948 Supp., p. 49), Proclamation No. 2792 of June 25, 1948 (3 CFR., 1948 Supp., p. 50), Proclamation No. 2798 of July 15, 1948 (3 CFR., 1948 Supp., p. 55), Proclamation No. 2829 of March 8, 1949 (14 F. R. 49), and Proclamation No. 2865 of November 30, 1949 (14 F. R. 235);

3. WHEREAS, pursuant to the authority vested in the President by the Constitution and the statutes, including the said section 350, the period for the exercise of the said authority under such section having been so extended, on October 30, 1947, the President entered into an exclusive trade agreement with the Government of the Republic of Cuba (Treaties and International Acts Series 1703), which exclusive trade agreement includes certain portions of other documents made a part thereof and provides for the customs treatment in respect of ordinary customs duties of products of the Republic of Cuba imported into the United States of America;

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Division of the Federal Register, the National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the Code of Federal Regulations, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended June 19, 1937.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

4. WHEREAS by Proclamation No. 2764 of January 1, 1948 (3 CFR, 1948 Supp., p. 11), the President proclaimed such modifications of existing duties and other import restrictions of the United States of America in respect of products of the Republic of Cuba and such continuance of existing customs and excise treatment of products of the Republic of Cuba imported into the United States of America as were then found to be required or appropriate to carry out the said exclusive trade agreement on and after January 1, 1948, which proclamation has been supplemented by the said Proclamations of January 30, 1948, April 22, 1948, May 4, 1948, June 11, 1948, June 25, 1948, July 15, 1948, March 8, 1949, and November 30, 1949;

5. WHEREAS I, HARRY S. TRUMAN, President of the United States of America have found as a fact that certain existing duties and other import restrictions of the United States of America, the Kingdom of Denmark, the Dominican Republic, the Republic of Finland, the Kingdom of Greece, the Republic of Haiti, the Republic of Italy, the Republic of Liberia, the Republic of Nicaragua, the Kingdom of Sweden, and the Oriental Republic of Uruguay are unduly burdening and restricting the foregin trade of the United States of America and that the purpose declared in the said section 350 of the Tariff Act of 1930, as amended by the acts specified in the first recital of this proclamation and by sections 4 and 6 of the Trade Agreements Extension Act of 1949 (Public Law 307, 81st Congress), will be promoted by a trade agreement between the Government of the United States of America and the Governments of some or all of the other countries named in this recital;

6. WHEREAS reasonable public notice of the intention to conduct trade agreement negotiations with the Governments of the countries named in the fifth recital of this proclamation was given, the views presented by persons interested in

such negotiations were received and considered, and information and advice with respect to such negotiations was sought and obtained from the United States Tariff Commission, the Departments of State, Defense, Agriculture, and Commerce, and from other sources;

7. WHEREAS, the period for the exercise of the said authority to enter into foreign trade agreements under section 350 having been extended by section 3 of the Trade Agreements Extension Act of 1949 until the expiration of three years from June 12, 1948, and the trade agreement negotiations referred to in the sixth recital of this proclamation having been successfully carried out, on October 10, 1949, I entered, through my duly empowered plenipotentiary, into a trade agreement providing for the accession to the General Agreement on Tariffs and Trade of the Governments of the countries named in the fifth recital of this proclamation, which trade agreement consists of the Annecy Protocol of Terms of Accession to the General Agreement on Tariffs and Trade, dated October 10, 1949, including the annexes thereto, authentic in the English and French languages as indicated, and a copy of which is annexed to this proclamation; [1]

8. WHEREAS said protocol of accession has been signed by the Government of the Republic of Haiti under such circumstances that it will enter into force for such Government, and such Government will become a contracting party to the said general agreement, on January 1, 1950;

9. WHEREAS I determine, in accordance with the provisions of paragraph 4 of the said protocol of accession, that the concessions provided for in part I of schedule XX in annex A to the said protocol of accession which are not identified in the following list shall not be applied until they shall have been identified in such list by proclamation:

Item (paragraph)	Rates of duty
58	6¼% ad val.
412 [second]	16⅔% ad val. [first such rate]
739 [first]	1¢ per lb.
746	3¾¢ per lb.
747	17½% ad val.
751	10% ad val.
752 [first]	8¾% ad val.
752 [second]	14% ad val.
802	$1.75 per proof gal.
1023	20% ad val.
1530 (e) [second]	Both rates
1670	Free, identified only as to logwood
1731	Free, identified only as to lemon-grass oil
1789	Free;

10. WHEREAS I find that such modifications of existing duties and other import restrictions and such continuance of existing customs or excise treatment of articles as are hereinafter proclaimed in part I of this proclamation will be required or appropriate, on and after January 1, 1950, to carry out the said trade agreement specified in the seventh recital of this proclamation;

11. WHEREAS part II of schedule XX of the said general agreement, which was made a part of the said exclusive trade agreement specified in the third recital of this proclamation, is supplemented by part II of the said schedule XX in annex A to the said protocol of accession, and I determine that it is required or appropriate, on and after January 1, 1950, to carry out the said exclusive trade agreement specified in the third recital of this proclamation that part I of the said schedule XX of the general agreement be applied as supplemented by the said part II of schedule XX in annex A to the protocol of accession;

12. WHEREAS the said trade agreement specified in the first recital of this proclamation and the said exclusive trade agreement specified in the third recital of this proclamation are to be supplemented by a Third Protocol of Rectifications to the General Agreement on Tariffs and Trade, dated August 13, 1949, paragraph 3 of which protocol provides that the provisions thereof shall become an integral part of the said general agreement on the day on which the said protocol has been signed by all the governments which are at that time contracting parties, and a copy of which, in the English and French languages, is annexed to this proclamation; [2]

13. WHEREAS I determine that it is required or appropriate to carry out, on and after the day when the said protocol specified in the twelfth recital of this proclamation has been signed by all the governments then contracting parties, the said trade agreement specified in the first recital of this proclamation that part I of schedule XX of said general agreement be rectified in the manner provided for in the said protocol;

14. WHEREAS I determine that it is required or appropriate to carry out, on and after the day when the said protocol specified in the twelfth recital of this proclamation has been signed by all the governments then contracting parties, said exclusive trade agreement specified in the third recital of this proclamation that part II of schedule XX of said general agreement, which was made a part of the said exclusive trade agreement, be rectified in the manner provided for in the said protocol; and

15. WHEREAS the said trade agreement specified in the first recital of this proclamation is to be supplemented by a Protocol Modifying Article XXVI of the General Agreement on Tariffs and Trade, dated August 13, 1949, paragraph 5 of which protocol provides that the amendment set forth in paragraph 1 thereof shall, upon the deposit of the instruments of acceptance pursuant to paragraphs 3 and 4 thereof by two-thirds of the governments which are at that time contracting parties, become effective in accordance with the provisions of Article XXX of said general agreement, and a copy of which, in the English and French languages, is annexed to this proclamation; [3]

16. WHEREAS the said trade agreement specified in the first recital of this proclamation is also to be supplemented by: (a) a First Protocol of Modifications to the General Agreement on Tariffs and Trade, (b) a Protocol Replacing Schedule I (Australia) of the General Agreement on Tariffs and Trade, and (c) a Protocol Replacing Schedule VI (Ceylon) of the General Agreement on Tariffs and Trade, each dated August 13, 1949, paragraph 3 of each of which protocols provides that the respective protocol shall enter into force on the day on which it has been signed by all the governments which are at that time contracting parties, and a copy of each of which, in the English and French languages, is annexed to this proclamation; [4]

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the statutes, including the said section 350 of the Tariff Act of 1930, as amended, do proclaim as follows:

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[1] The text of the Annecy Protocol of Terms of Accession to the General Agreement on Tariffs and Trade has been published in English as Department of State publication no. 3664, Commercial Policy Series 121, entitled "General Agreement on Tariffs and Trade: Annecy Protocol of Terms of Accession and the Annecy Schedules of Tariff Concessions"; and in English and French by the Interim Commission for the International Trade Organization, Geneva, October 1949, sales no. GATT/1949–1 for the English text and Numéro de vente, GATT/1949–1 for the French text. Paragraphs 1 to 13 and Schedule XX in Annex A will be printed in English in TD52373 (Customs). The complete text of the Protocol in the language or languages, in which authentic, with an English translation of those parts authentic in French only, will be published by the Department of State in Treaties and Other International Acts Series and in the Statutes at Large.

[2] The text of the Third Protocol of Rectifications to the General Agreement on Tariffs and Trade will be published in English by the Department of State in the near future, and those parts of paragraph 1 relating to Annex I and Schedule XX of the General Agreement, and paragraphs 2 and 3 will be published in English in TD52373 (Customs). The complete text of the Protocol in the language or languages in which authentic, with an English translation of those parts authentic in French only, will, following its entry into force, be published by the Department of State in Treaties and Other International Acts Series and in the Statutes at Large.

[3] The text of the Protocol Modifying Article XXVI of the General Agreement on Tariffs and Trade will be published in English by the Department of State in the near future, and will be published in English in TD52373 (Customs). The complete text of the Protocol in both English and French will, following its entry into force, be published by the Department of State in Treaties and Other International Acts Series and in the Statutes at Large.

[4] The text of the first Protocol of Modifications to the General Agreement on Tariffs and Trade, the Protocol replacing Schedule I (Australia) of the General Agreement on Tariffs and Trade, and the Protocol replacing Schedule VI (Ceylon) of the General Agreement on Tariffs and Trade will be published in English in the near future by the Department of State. The complete texts of these Protocols in English and French will, following their entry into force, be published by the Department of State in Treaties and Other International Acts Series and in the Statutes at Large.

PART I

To the end that the said trade agreement specified in the seventh recital of this proclamation may be carried out:

(a) Subject to the provisions of subdivision (b) of this part, such modifications of existing duties and other import restrictions of the United States of America and such continuance of existing customs or excise treatment of articles imported into the United States of America as are specified or provided for in paragraphs 1 to 13 of the said protocol of accession and in part I of, and the general notes in, schedule XX in annex A thereto shall be effective on and after January 1, 1950.

(b) The application of the provisions of subdivision (a) of this part shall be subject to the applicable terms, conditions, and qualifications set forth in paragraphs 1 to 13 of the said protocol of accession, in part I of, and the general notes in, schedule XX in annex A thereto, in parts I, II, and III of the said general agreement, in part I, and the general notes in, schedule XX thereof, and in said protocol of provisional application specified in the first recital of this proclamation, including any applicable amendments and rectifications of the said general agreement which have been proclaimed by the President, and the application of the said provisions of subdivision (a) shall also be subject to the exception that no rate of duty or import tax shall be applied to a particular article by virtue of this proclamation if, when the article is entered, or withdrawn from warehouse, for consumption—

(I) the rate represents a concession which is not identified in the list set forth in the ninth recital of this proclamation, or

(II) more favorable customs treatment is prescribed for the article by any of the following then in effect:

(i) a proclamation pursuant to said section 350 of the Tariff Act of 1930, as amended, or

(ii) any other proclamation, a statute, or an executive order, which proclamation, statute, or order either provides for an exemption from duty or import tax or became effective subsequent to October 10, 1949.

PART II

To the end that the said trade agreement specified in the first recital of this proclamation may be carried out:

(a) Effective on and after the day on which the said protocol of rectifications specified in the twelfth recital of this proclamation has been signed by all the governments which are at that time contracting parties, the provisions of annex I, and of part I of schedule XX, of said general agreement shall be applied as rectified by the applicable provisions of the said protocol.

(b) Effective on and after the day on which the amendment set forth in the said protocol modifying Article XXVI has been accepted by the United States of America and by two-thirds of the governments which are at that time contracting parties, the provisions of Article XXVI of said general agreement shall be applied as amended by the said amendment.

PART III

To the end that the said exclusive trade agreement specified in the third recital of this proclamation may be carried out:

(a) Effective on and after January 1, 1950, the provisions of the said part II of schedule XX of the general agreement, which was made a part of the said exclusive trade agreement, shall be applied as supplemented by the said part II of schedule XX in annex A to the said protocol of accession; and

(b) Effective on and after the day on which the said protocol of rectifications specified in the twelfth recital of this proclamation has been signed by all the governments which are at that time contracting parties, the provisions of the said part II of the general agreement, which are made a part of the said exclusive trade agreement, shall be applied as rectified by the applicable provisions of the said protocol.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 22nd day of December, in the year of our Lord nineteen hundred and [SEAL] forty-nine, and of the Independence of the United States of America the one hundred and seventy-fourth.

HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Secretary of State.

[F. R. Doc. 49-10509; Filed, Dec. 23, 1949; 3:46 p. m.]

9664?

EXECUTIVE ORDER 10094

FURTHER EXEMPTION OF CLYDE B. AITCHISON FROM COMPULSORY RETIREMENT FOR AGE

WHEREAS Clyde B. Aitchison, a member of the Interstate Commerce Commission, was by Executive Order No. 9780 of September 19, 1946, exempted from compulsory retirement for age for an indefinite period of time not extending beyond the duration of his appointment or term of office; and

WHEREAS his term of office will expire on December 31, 1949; and

WHEREAS sections 11 and 24 of the Interstate Commerce Act, as amended, provide that upon the expiration of his term of office a Commissioner of the Interstate Commerce Commission shall continue to serve until his successor is appointed and shall have qualified; and

WHEREAS, in my judgment, the public interest requires that the said Clyde B. Aitchison be further exempted from compulsory retirement for age as provided below:

NOW, THEREFORE, by virtue of the authority vested in me by section 204 of the act of June 30, 1932, 47 Stat. 404 (5 U. S. C. 715a), I hereby further exempt the said Clyde B. Aitchison from compulsory retirement for age until his successor in office is appointed and shall have qualified.

HARRY S. TRUMAN

THE WHITE HOUSE,
December 22, 1949.

[F. R. Doc. 49-10510; Filed, Dec. 23, 1949; 3:49 p. m.]

6647

RULES AND REGULATIONS

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

ENTIRE EXECUTIVE CIVIL SERVICE

Under authority of § 6.1 (d) of Executive Order 9830, the third sentence of § 6.101 (g) is hereby revoked. Effective upon publication in the FEDERAL REGISTER, § 6.101 (g) is amended to read as follows:

§ 6.101 *Entire Executive Civil Service.* * * *

(g) NC/PD. Any position in which the appointee will receive compensation aggregating not more than $800 per annum, the duties of which are part-time or intermittent, but such appointments shall not be for job employment. In Washington, D. C., such appointments shall be subject to the prior approval of the Commission. Additional employment of the appointee by another agency, under similar conditions, shall be subject to the prior approval of the Commission.

(R. S. 1753, sec. 2, 22 Stat. 403; 5 U. S. C. 631, 633. E. O. 9830, Feb. 24, 1947, 12 F. R. 1259; 3 CFR, 1947 Supp. E. O. 9973, June 28, 1948, 13 F. R. 3600, 3 CFR, 1948 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] HARRY B. MITCHELL,
Chairman.

[F. R. Doc. 49-10467; Filed, Dec. 27, 1949; 8:47 a. m.]

TITLE 7—AGRICULTURE

Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 70—GRADING AND INSPECTION OF POULTRY AND DOMESTIC RABBITS AND EDIBLE PRODUCTS THEREOF; UNITED STATES SPECIFICATIONS FOR CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

Correction

In Federal Register Document 49-9180, appearing at page 6835 of the issue for Tuesday, November 15, 1949, the following corrections should be made:

1. In the last sentence of § 70.1 (aa) the phrase "inspector service" should read "inspection service".

2. In the fifth line of § 70.1 (cc) a comma should appear after the word "part".

3. In § 70.16 (h) (2) (xiv) the fourth word, "receptables", should read "receptacles".

4. In paragraph (b) (1) and in paragraph (c) (1) of § 70.32 the following words should be added at the end following the words "certified eligible product": "after suitable examination of the product has been made by the inspector."

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System

Subchapter A—Board of Governors of the Federal Reserve System

[Reg. D]

PART 204—RESERVES OF MEMBER BANKS

TIME DEPOSIT OF TRUST FUNDS IN MEMBER BANK'S OWN BANKING DEPARTMENT

§ 204.102 *Time deposit of trust funds in member bank's own banking department.* The Board of Governors has been presented with a question as to whether certain deposits of uninvested trust funds made by the trust department of a member bank in its own banking department may properly be regarded as time deposits within the meaning of this part, relating to reserves of member banks, as well as Part 217 of this chapter, relating to payment of interest on deposits.

This question has arisen out of the practice followed by certain member banks of commingling uninvested trust funds and depositing a portion of them in a single time deposit in their own banking departments. Under this practice, it is understood that a certain portion of the aggregate amount of uninvested trust funds held by the trust department is placed in the banking department in a demand deposit and that another portion of such trust funds is placed in a time deposit subject to a written agreement between the two departments with respect to notice of withdrawal in conformity with the requirements of this part and Part 217 of this chapter. However, the records of the bank do not show or identify the dollar amount of the funds of any particular trust estate which are included in the time deposit.

While the practices of different banks vary in details, the portion of the aggregate amount of trust funds which is placed in the time deposit is determined generally on the basis of periodic analyses of anticipated requirements for the disbursement or other use of trust funds belonging to particular trust estates within the near future.

After careful consideration of this problem, the Board has reached the conclusion that, where a portion of commingled uninvested trust funds is thus placed in a single deposit in the bank's own banking department without identification of the amount of each trust included in the deposit, such a deposit may be regarded as complying with the requirements of the definition of a "time deposit" contained in this part and Part 217 of this chapter, if:

(a) The amount of uninvested trust funds placed in such deposit is determined in good faith on a reasonable and conservative basis in the light of monthly reviews of anticipated requirements for the disbursement of trust funds within the near future which show that no trust funds included in the deposit will be needed for the purpose of making such disbursements within the ensuing 30 days;

(b) The deposit is subject to a written agreement between the trust department and the banking department which complies with the requirements of the definition of one of the types of time deposits set forth in this part and Part 217 of this chapter and the deposit otherwise conforms to such definition;

(c) The member bank is satisfied, either through consultation with its attorneys or otherwise, that the practice under which such a deposit is made is not inconsistent with applicable State law relating to trust administration or otherwise, and that the practice is not inconsistent with the terms of any applicable trust instrument or court order.

If the amount of uninvested trust funds placed in a time deposit in the member bank's banking department is determined arbitrarily and without consideration of probable requirements for the disbursement of funds of particular trust accounts, it is the Board's view that the deposit would not satisfy the conditions prescribed above.

(Sec. 11 (i), 38 Stat. 262; 12 U. S. C. 248 (i). Interpret or apply secs. 11, 19, 38 Stat. 261, 270, as amended; 12 U. S. C. 248 (c), (e), 461, 462, 462a-1, 462b, 464, 465)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] S. R. CARPENTER,
Secretary.

[F. R. Doc. 49-10461; Filed, Dec. 27, 1949; 8:47 a. m.]

[Reg. Q]

PART 217—PAYMENT OF INTEREST ON DEPOSITS

TIME DEPOSIT OF TRUST FUNDS IN MEMBER BANK'S OWN BANKING DEPARTMENT

§ 217.101 *Time deposit of trust funds in member bank's own banking department.* For text of this interpretation, see § 204.102 under Part 204, *supra*.

(Sec. 11 (i), 38 Stat. 262; 12 U. S. C. 248 (i). Interpret or apply secs. 19, 24, 38 Stat. 270, 273, as amended, sec. 8, 48 Stat. 168, as amended; 12 U. S. C. 264 (c) (7), 371, 371a, 371b, 461)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] S. R. CARPENTER,
Secretary.

[F. R. Doc. 49-10462; Filed, Dec. 27, 1949; 8:46 a. m.]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Civil Air Regs., Amdt. 29-1]

PART 29—PHYSICAL STANDARDS FOR AIRMEN

WAIVER OF PHYSICAL REQUIREMENTS FOR AIRLINE TRANSPORT PILOTS

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 21st day of December 1949.

Part 29 currently provides that an airman certificate shall be issued to an applicant other than an applicant for the original issuance of an airline transport pilot certificate who does not meet the appropriate physical standards if his aeronautical experience, ability, and judgment compensate for his physical deficiency and he meets all other requirements for the issuance of such certificate.

This amendment provides for the original issuance of airline transport pilot certificates to applicants who do not meet the appropriate physical standards for the issuance of such certificates, but who meet all other certificate requirements, and whose airman operational experience, ability, and judgment compensate for their physical deficiency.

In this connection it should be noted that under current regulations an airline transport pilot can acquire a physical disability after the original issuance of his airline transport pilot rating, and, if he is able to compensate for such deficiency, be eligible to continue to exercise the privileges of such rating. However, had such an individual acquired this same deficiency prior to the original issuance of the rating, he would not, under current regulations, be able to obtain it. The Board does not at this time believe that there is any sound reason for this distinction.

This amendment is necessary at this time for the following reason. Part 42, as revised, requires that all pilots serving as pilots in command of large aircraft in irregular air carrier operations shall, after December 31, 1949, possess valid airline transport pilot ratings. Prior to such revision pilots operating under Part 42 were required to hold only a commercial rating which may be obtained even though an applicant is unable to meet all of the prescribed physical standards for the issuance of such rating. We have been advised that several pilots, employed for considerable periods of time as pilots in command of large aircraft operated by irregular air carriers, are unable to meet the physical

requirements for the original issuance of airline transport pilot certificates. Under current regulations these pilots would not be able to continue in their employment, even though it may be shown that they can competently and safely perform their duties. It is believed that there are a number of pilots whose operational experience, ability, and judgment justify the issuance of airline transport ratings even though they may not fully meet the physical standards for the original issuance of an airline transport pilot certificate. This amendment will enable such pilots to obtain airline transport pilot certificates.

In addition, this amendment clarifies the meaning of the phrase "aeronautical experience" as currently used in § 29.5. That phrase has been interpreted as having the same connotation when used in that section as when used in the airman certification parts of the Civil Air Regulations, that is, to mean merely the specified total number of flying hours or years of experience required to obtain an airman certificate. However, such phrase, for the purposes of § 29.5, should be interpreted as including an evaluation and finding by the Administrator of the quality of the applicant's past performance as an airman to determine whether he is competent to perform safely the duties of the airman certificate applied for, notwithstanding his physical deficiency. Accordingly, the phrase "operational record as an airman" is substituted for the phrase "aeronautical experience."

This amendment does not require the airman certificate issued to a pilot not meeting the prescribed physical standards to be endorsed as currently prescribed. We have been advised by the Administrator of Civil Aeronautics that in his opinion such an endorsement is unnecessary to insure that holders of airman certificates perform safely the duties authorized by such certificate and therefore this requirement imposes an unnecessary administrative burden upon his staff. The Board concurs in the Administrator's opinion in this regard.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all relevant matter presented. For the reasons stated above, and since this amendment imposes no additional burden on any person, the Board finds that good cause exists for making this amendment effective on less than 30 days' notice.

In consideration of the foregoing the Civil Aeronautics Board hereby amends Part 29 of the Civil Air Regulations (14 CFR, Part 29, as amended) effective immediately:

By amending § 29.5 to read as follows:

§ 29.5 *Waiver of physical standards.* An airman certificate shall be issued to an applicant who does not meet the appropriate physical standards if the Administrator finds that the applicant's operational record, ability, and judgment as an airman compensate for his physical deficiency and he meets all other requirements for the issuance of said certificate. Such certificate may be limited as to type of operation, type of aircraft, or period of reexamination.

(Secs. 205 (a), 52 Stat. 984, 49 U. S. C. 425 (a). Interpret or apply secs. 601 and 602, 52 Stat. 1007 and 1008; 62 Stat. 1216; 49 U. S. C. 551 and 552)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 49-10472; Filed, Dec. 27, 1949; 8:49 a. m.]

D6649-6650

Subchapter C—Procedural Regulations

[Regs., Serial No. PR-5]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

INFORMAL MAIL RATE CONFERENCE PROCEDURE

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 20th day of December 1949.

Over the course of the past two years the Board's staff has made increasing use of informal conferences with representatives of air carriers and of the Post Office Department to explore the issues which may be involved in a mail rate proceeding prior to the issuance of the Board's order to show cause therein. The Board believes that procedures of this nature are beneficial and expedite its mail rate work, but in order to prevent any possible abuses which might develop the Board desires to prescribe by regulation the procedures to be followed.

Accordingly, the Bureau of Economic Regulation and the Bureau of Law have been authorized to conduct conferences with any interested person in connection with pending proceedings for the establishment of rates for the transportation of mail. The purpose of such conferences is to consider and clarify the issues and the factual material bearing on such issues to the end that areas of disagreement may be reduced or eliminated.

These conferences are not to be considered in the nature of proceedings, and they do not supplant the conference procedure in § 302.7, but they are, nevertheless, an essential part of the processes of the Board and are designed to enable the Board better to discharge its powers and duties under the act, particularly section 406 thereof. It is not intended that the conference procedure will be used in all pending cases. Its employment will depend upon the nature of the issues, the difficulties of gathering and appraising factual material, the work load, and the prospects of resolving differences. The inauguration of conferences will, therefore, be on the initiative of the Board's staff and no application by the carrier or any other interested person will be entertained by the Board.

Since this amendment is a rule of agency procedure and practice, notice and public procedure herein are not required.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 302 of the Procedural Regulations as follows, effective December 20, 1949, by adding a new § 302.19 to read as follows:

§ 302.19 *Informal mail rate conference procedure.* Conferences between members of the Board's staff, representatives of air carriers, Post Office Department and other interested persons called for the purposes of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail shall be governed by the procedures hereinafter set forth in this section.

(a) *Scope of conferences.* The mail rate conference will be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making principles. The duties and powers of the Board's staff in rate conferences essentially will not be different, therefore, from the duties and powers it has in the processing of rate cases not involving a rate conference. The staff function in both instances is to present clearly to the Board the issues and the related material facts, together with recommendations. The Board will make an independent determination of the soundness of the staff's analyses and recommendations.

(b) *Who may participate.* The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the Postmaster General, and the Board's staff. No other person will attend unless the Board's staff deems his presence necessary in the interest of one or more purposes to be accomplished, and in such case his participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the Board's staff.

(c) *Conditions upon participation; nondisclosure of information.* As a condition to participation every participant, during the period of the conferences and for 90 days after their termination, or until the Board takes public action with respect to the facts and issues covered in the conferences, whichever is earlier, (1) shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained and the business transacted in conference in absolute confidence and trust; (2) shall not deal, directly or indirectly, for the account of himself, his immediate family, members of his firm or company, or as a trustee, in securities of the carrier involved in the rate conferences except that under exceptional circumstances special permission may be obtained in advance from the Board; (3) shall abstain from obtaining, either directly or indirectly, any financial or any other advantage whatever from knowledge gained in such conferences; and (4) shall take extraordinary precautions and exercise the utmost control over personnel under his supervision to prevent that personnel from misusing such confidential information. Every representative of a carrier actually present at any conference shall sign a statement, on his own behalf and on behalf of the

carrier, the carrier's officers and directors, or the members of any firm of attorneys or consultants with whom he is associated, that he has read this entire instruction and promises to abide by it and advise any other participant to whom he discloses any confidential information of the restrictions imposed above. Every representative of the Postmaster General actually present at any conference shall, on his own behalf, sign a statement to the same effect.

For the purpose of this paragraph, participants shall include (1) any representative of any carrier actually present at any conference; (2) the carrier and the officers and directors of any carrier which has had a representative at any conference; (3) the members of any firm of attorneys or consultants, which has had a representative at any such conference, who by reason of their professional relationship with the firm come into possession of information obtained at the conference; (4) any representative of the Postmaster General actually present, and any other member of the Postmaster General's staff who by reason of his official supervisory duties comes into possession of information obtained at the conference.[1]

(d) *Report of compliance.* Within ten days after the expiration of the time specified for keeping conference matters confidential every participant as defined in paragraph (c) of this section shall file a verified compliance report with the Secretary of the Board, stating that he has complied in every respect with the conditions in paragraph (c) of this section, or if he has not so complied, stating in detail in what respects he has failed to comply.

(e) *Information to be requested from the carrier.* With respect to the rate for a future period, the carrier will be requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment which will be required to perform the operations for a full future year. Full and adequate support must be presented for all estimates, particularly where such estimates deviate materially from the carrier's past experience. With respect to the rate for a past period, essentially the same procedure will be followed. Other information or data likewise may be requested by the Board's staff. All data submitted by the carrier must be certified by a responsible officer.

(f) *Staff analyses of data for submission of answers thereto.* After a careful analysis of these data, the Board's staff will, in most cases, send the carrier what might be termed a statement of exceptions showing areas of differences. Where practicable, the carrier may submit its answer to these exceptions. Conferences will then be scheduled to work out a clear understanding and resolution of the issues and facts from the standpoint of sound rate-making principles.

(g) *Availability of data to Post Office Department.* The representatives of the Postmaster General will have access to all conference data and, insofar as practicable, will be furnished copies of all pertinent data prepared by the Board's staff and the carrier, and a reasonable time will be allowed to get acquainted with the facts and issues and to make any presentation deemed necessary.

(h) *Post-conference procedure.* The rate conferences not being in the nature of proceedings, no briefs, or argument, or any formal steps, will be entertained by the Board. The form, content and time of the staff's presentation to the Board are entirely matters of internal procedure. Any participant is at liberty, however, further to urge his contentions by way of memoranda addressed to the Board's staff and may request that such memoranda be presented to the Board as a more effective way of stating his position.

(i) *Effect of conference agreements.* No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Board or any participant. Any party to the mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that rate conferences were held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that upon the filing of an answer by any party to the rate proceeding all issues going to the establishment of a rate shall be open, except insofar as limited in pre-hearing conference in accordance with § 302.7 of the rules of practice.

(Sec. 205 (a), 52 Stat. 984; 49 U. S. C. 425 (a)

NOTE: The reporting requirements of this section have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN, *Secretary.*

[F. R. Doc. 49-10471; Filed, Dec. 27, 1949; 8:48 a. m.]

[1] Restrictions upon the Board's staff on disclosure of confidential information and dealing in air carrier securities have existed for some time under limitations established pursuant to the Civil Aeronautics Act of 1938, as amended, page C2-27 of the Federal Personnel Manual of the Civil Service Commission, and section 93 of the Criminal Code.

TITLE 16—COMMERCIAL PRACTICES

D6651

Chapter I—Federal Trade Commission

[Docket No. 5416]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

PACKAGE ADVERTISING CO.

Subpart—*Coercing and intimidating:* § 3.345 *Competitors—By threatening infringement suits, not in good faith, or justifiably;* § 3.370 *Suppliers and sellers—To accept price fixing, licensing program.* Subpart—*Using patents, rights or privileges unlawfully:* § 3.2490 *Diverting trade in, or exploiting sale of, unpatented products, generally;* § 3.2495 *Fixing prices through licensing agreements exceeding patent monopoly;* § 3.2500 *Fixing resale price of unpatented part, in patent combination system.* In or in connection with the offering for sale, sale, and distribution of printed wax paper bands or any similar product, to be used as inserts or outserts in connection with the wrapping of bread or other bakery products, coercing, presuading, inducing, or otherwise causing other manufacturers or distributors of printed waxed paper bands to enter into, continue, cooperate in, or carry out any agreement or understanding with respondent, whether or not based upon respondent's patents and trade mark, for the purpose, or with the effect, of fixing, establishing, or maintaining the price or terms or conditions of sale at which, or designating, limiting or controlling the territory within which, sales of printed waxed paper bands not manufactured or sold by respondent shall be made; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U. S. C., sec. 45b) [Cease and desist order, Henry J. Taylor trading as The Package Advertising Company, Docket 5416, November 15, 1949]

In the Matter of Henry J. Taylor, Trading Under the Name and Style of The Package Advertising Company

This proceeding having been heard by the Federal Trade Commission upon the complaint, answer of the respondent, testimony and other evidence in support of and in opposition to the allegations of the complaint taken before a trial examiner of the Commission theretofore duly designated by it, recommended decision of the trial examiner and exceptions filed thereto, briefs, and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Henry J. Taylor, individually and trading under the name and style of The Package Advertising Company or any other name, his agents, representatives, and employees, directly or through any corporate or other device, in or in connection with the offering for sale, sale, and distribution of printed waxed paper bands, or any similar product, to be used as inserts or outserts in connection with the wrapping of bread or other bakery products, do forthwith cease and desist from coercing, persuading, inducing, or otherwise causing other manufacturers or distributors of printed waxed paper bands to enter into, continue, cooperate in, or carry out any agreement or understanding with respondent, whether or not based upon respondent's patents and trade-mark, for the purpose, or with the effect, of fixing, establishing, or maintaining the price or terms or conditions of sale at which, or designated, limiting or controlling the territory within which, sales of printed waxed paper bands not manufactured or sold by respondent shall be made.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth

in detail the manner and form in which he has complied with this order.

Issued: November 15, 1949.

By the Commission.

[SEAL] D. C. DANIEL,
Secretary.

[F R. Doc. 49-10466; Filed, Dec. 27, 1949; 8:48 a. m.]

TITLE 24—HOUSING AND HOUSING CREDIT

Chapter VIII—Office of Housing Expediter

PART 825—RENT REGULATION UNDER THE HOUSING AND RENT ACT OF 1947, AS AMENDED

TENNESSEE AND KENTUCKY

Correction to the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments.

Item 288 of Schedule A of the Rent Regulation for Controlled Rooms in Rooming Houses and Other Establishments (§§ 825.81 to 825.92) is corrected to read as follows:

(288) Clarksville Tennessee: Montgomery.	Mar. 1, 1942.	Sept. 1, 1942.	Oct. 16, 1942.
Kentucky: Christian and Todd.	Mar. 1, 1942.	Sept. 1, 1942.	Oct. 16, 1942.

(Sec. 204 (d), 61 Stat. 197, as amended by 62 Stat. 37, 94, Pub. Law 31, 81st Cong.; 50 U. S. C. App. 1894 (d))

This correction shall be effective as of July 1, 1947.

Issued this 22d day of December 1949.

TIGHE E. WOODS,
Housing Expediter.

[F. R. Doc. 49-10465; Filed, Dec. 27, 1949; 8:47 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, OR LOCAL RETAILING CAPACITY, OR IN THE CAPACITY OF OUTSIDE SALESMAN"

INTERPRETATIONS OF REGULATIONS

Section 13 (a) (1) of the Fair Labor Standards Act, as amended, provides an exemption from the minimum wage and overtime provisions of the act for employees employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman, as such terms are defined and delimited by regulations of the Administrator. Pursuant to this provision of the act the Administrator has issued regulations defining and delimiting these terms.

After due notice and public procedure as required by the Administrative Procedure Act the Administrator on December 24, 1949, published in the FEDERAL REGISTER revised Regulations, Part 541. For the purpose of outlining and explaining the application of these regulations to specific types of situations, an explanatory bulletin has been prepared which interprets these regulations in the light of their application to specific factual situations. This explanatory bulletin contains statements of general policy and interpretations directly related to the regulations contained in this part, and is therefore published in conjunction with the regulations in this part. The text of such explanatory bulletin is as follows:

SUBPART B—INTERPRETATIONS

AUTHORITY: §§ 541.99 to 541.600 issued under 52 Stat. 1067; 29 U. S. C. 213.

SUBPART B—INTERPRETATIONS

§ 541.99 *Introductory statement.* (a) Section 13 (a) (1) of the Fair Labor Standards Act exempts from the wage and hour provisions of the act "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator)." The requirements for exemption under this section of the act are contained in Subpart A of this part, issued by the Administrator.

(b) This subpart contains material explaining and illustrating the terms used in the regulations in Subpart A. These statements and illustrations reflect the construction of the regulations in Subpart A which the Divisions will follow. This subpart supersedes and replaces all prior statements, releases, and opinions explaining and interpreting Subpart A of this part and section 13 (a) (1) of the act.

(c) A few words of caution are necessary in connection with the use of the illustrations. The exempt or nonexempt status of any particular employee must be determined on the basis of whether his duties, responsibilities, and salary meet all the requirements of the pertinent section of the regulations in Subpart A of this part. The employee's title or class specification is of no significance in determining whether he meets these tests. The use of any job titles in the illustrations contained in this subpart should not be construed to mean that employees holding such titles are either exempt or nonexempt, or that they meet any one of the specific requirements for exemption. In any specific case it is the actual work performance, the responsibilities, and salary of the individual employee which determines whether a particular test has been met or whether the exemption applies.

(d) In determining that an employee's duties, responsibilities, and salary meet the requirements for exemption, it should be borne in mind that a change in the employee's assignment may bring with it a change in his exemption status.

For example, an employee may be assigned additional or different duties during a busy period. Such additional or different duties should be considered in ascertaining whether the employee meets the requirements for exemption during those weeks.

(e) Finally, it is a well-established principle that the burden of proving exemption under section 13 (a) (1), as well as any other exemption provision of the Fair Labor Standards Act, rests on the employer.

EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE CAPACITY

§ 541.100 *The definition of "executive".* Section 541.1 defines the term "bona fide executive" as follows:

The term "employee employed in a bona fide executive * * * capacity" in section 13 (a) (1) of the act shall mean any employee:

(a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided,* That this paragraph shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; and

(f) Who is compensated for his services on a salary basis at a rate of not less than $55 per week (or $30 per week if employed in Puerto Rico or the Virgin Islands) exclusive of board, lodging, or other facilities:

Provided, That an employee who is compensated on a salary basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

§ 541.101 *General.* The duties and responsibilities of an exempt executive employee are described in paragraphs (a) through (d) of § 541.1. Paragraph (e) of the section contains, among other things, a 20 percent limitation on the amount of his time which an employee may devote to activities "which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section." For convenience in discussion, the work described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work will be referred to as "exempt" work, while the other activities will be referred to as "nonexempt" work.

§ 541.102 *Management.* (a) In the usual situation the determination of whether a particular kind of work is exempt or nonexempt in nature is not difficult. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions which are easily recognized as within the scope of the exemption.

(b) For example, it is generally clear that work such as the following is exempt work when it is performed by an employee in the management of his department or the supervision of the employees under him: Interviewing, selecting and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; apportioning the work among the workers; determining the type of materials, supplies, machinery or tools to be used; controlling the flow and distribution of materials and supplies; providing for the safety of the men and the property.

§ 541.103 *Primary duty.* A determination of whether an employee has management as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the managerial duties is a useful guide in determining whether management is the primary duty of an employee. In the ordinary case it may be taken as a good rule of thumb that primary duty means the major part, or over 50 percent, of the employee's time. Thus, an employee who spends over 50 percent of his time in management would have management as his primary duty. Time alone, however, is not the sole test, and in situations where the employee does not spend over 50 percent of his time in managerial duties, he might nevertheless have management as his primary duty if the other pertinent factors support such a conclusion. Some of these pertinent factors are the relative importance of the managerial duties as compared with other types of duties, the frequency with which the employee exercises discretionary powers, his relative freedom from supervision, and the relationship between his salary and the wages paid other employees for the kind of nonexempt work performed by the supervisor.

§ 541.104 *Department or subdivision.* (a) In order to qualify under § 541.1, the employee's managerial duties must be performed with respect to the enterprise in which he is employed or a customarily recognized department or subdivision thereof. The phrase "a customarily recognized department or subdivision" is intended to distinguish between a mere collection of men assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. In order properly to classify an individual as an executive he must be more than merely a supervisor of two or more employees; he must be in charge of and have as his primary duty the management of a recognized unit which has a continuing function.

(b) In the vast majority of cases there is no difficulty in determining whether an individual is in charge of a customarily recognized department or subdivision of a department. For example, it is clear that where an enterprise comprises more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise. Questions arise principally in cases involving supervisors who work outside the employer's establishment, move from place to place, or have different subordinates at different times.

(c) In such instances, in determining whether the employee is in charge of a recognized unit with a continuing function, it is the Divisions' position that the unit supervised need not be physically within the employer's establishment and may move from place to place, and that continuity of the same subordinate personnel is not absolutely essential to the existence of a recognized unit with a continuing function, although in the ordinary case a fixed location and continuity of personnel are both helpful in establishing the existence of such a unit. The following examples will illustrate these points.

(d) The projects on which an individual in charge of a certain type of construction work is employed may occur at different locations, and he may even hire most of his work force at these locations. The mere fact that he moves his location would not invalidate his exemption if there are other factors which show that he is actually in charge of a recognized unit with a continuing function in the organization.

(e) Nor will an otherwise exempt employee lose the exemption merely because he draws the men under his supervision from a pool, if other factors are present which indicate that he is in charge of a recognized unit with a continuing function. For instance, if this employee is in charge of the unit which has the continuing responsibility for making all installations for his employer, or all installations in a particular city or a designated portion of a city, he would be in charge of a department or subdivision despite the fact that he draws his subordinates from a pool of available men.

(f) It cannot be said, however, that a supervisor drawn from a pool of supervisors who supervises employees assigned to him from a pool and who is assigned a job or a series of jobs from day to day or week to week has the status of an executive. Such an employee is not in charge of a recognized unit with a continuing function.

§ 541.105 *Two or more other employees.* (a) An employee will qualify as an "executive" under § 541.1 only if he customarily and regularly supervises at least two full-time employees or the equivalent. For example, if the "executive" supervises one full-time and two part-time employees of whom one works mornings and one, afternoons; or four part-time employees, two of whom work

mornings and two afternoons, this requirement would be met.

(b) The employees supervised must be employed in the department which the "executive" is managing.

(c) It has been the experience of the Divisions that a supervisor of as few as two employees usually performs nonexempt work in excess of the 20 percent tolerance provided in § 541.1.

(d) *Assistant department heads.* In a large machine shop there may be a machine-shop supervisor and two assistant machine-shop supervisors. Assuming that they meet all the other qualifications of § 541.1 and particularly that they are not working foremen, they should certainly qualify for the exemption. A small department in a plant or in an office is usually supervised by one person. Any attempt to classify one of the other workers in the department as an executive merely by giving him an honorific title such as assistant supervisor will almost inevitably fail as there will not be sufficient true supervisory or other managerial work to keep two persons occupied. On the other hand, it is incorrect to assume that in a large department the supervision cannot be distributed among two or three employees, conceivably among more. In such instances, assuming that the other tests are met, especially the one concerning the performance of nonexempt work, each such employee "customarily and regularly directs the work of two or more other employees therein."

§ 541.106 *Authority to hire or fire.* Section 541.1 requires that an exempt executive employee have the authority to hire or fire other employees or that his suggestions and recommendations as to hiring or firing and as to advancement and promotion or any other change of status of the employees whom he supervises will be given particular weight. Thus, no employee, whether high or low in the hierarchy of management, can be considered as employed in a bona fide executive capacity unless he is directly concerned either with the hiring or the firing and other change of status of the employees under his supervision, whether by direct action or by recommendation to those to whom the hiring and firing functions are delegated.

§ 541.107 *Discretionary powers.* (a) Section 541.1 (d) requires that an exempt executive employee customarily and regularly exercise discretionary powers. A person whose work is so completely routinized that he has no discretion does not qualify for exemption.

(b) The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretionary powers.

§ 541.108 *Work directly and closely related.* (a) This phrase brings within the category of exempt work not only the actual management of the department and the supervision of the employees therein, but also activities which are closely associated with the performance of the duties involved in such managerial and supervisory functions or responsibilities. The supervision of employees and the management of a department include a great many directly and closely related tasks which are different from the work performed by subordinates and are commonly performed by supervisors because they are helpful in supervising the employees or contribute to the smooth functioning of the department for which they are responsible. Frequently such exempt work is of a kind which in establishments that are organized differently, or which are larger and have greater specialization of function, may be performed by a nonexempt employee hired especially for that purpose. Illustration will serve to make clear the meaning to be given the phrase "directly and closely related."

(b) *Time and payroll records.* Keeping basic records of working time, for example, is frequently performed by a timekeeper employed for that purpose. In such cases the work is clearly not exempt in nature. In other plants which are not large enough to employ a timekeeper, or in which the timekeeping function has been decentralized, the supervisor of each department keeps the basic time records of his own subordinates. In these instances, as indicated above, the timekeeping is directly related to the function of managing the particular department and supervising its employees. However, the preparation of a payroll by a supervisor, even the payroll of the employees under his supervision, cannot be considered to be exempt work, since the preparation of a payroll does not aid in the supervision of the employees or the management of the department. Similarly, the keeping by a supervisor of production records of his own subordinates for use in supervision or control would be exempt work, while the maintenance of production records of employees not under his direction would not be exempt work.

(c) *Distribution of materials.* Another example of work which may be directly and closely related to the performance of management duties is the distribution of materials and supplies. Maintaining control of the flow of materials and supplies in a department is ordinarily a responsibility of the managerial employee in charge. In many establishments the actual distribution of materials is performed by nonexempt employees under the supervisor's direction. In other establishments it is not uncommon to leave the actual distribution of materials and supplies in the hands of the supervisor. In such cases it is exempt work since it is directly and closely related to the managerial responsibility of maintaining the flow of materials.

(d) *Set-up work.* Set-up work is another illustration of work which may be exempt under certain circumstances if performed by a supervisor. The nature of set-up work differs in various industries and for different operations. Some set-up work is typically performed by the same employees who perform the "production" work; that is, the employee who operates the machine also "sets it up" or adjusts it for the particular job at hand. Such set-up work is part of the production operation and is not exempt. In other instances the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In some plants, particularly large ones, such set-up work may be performed by employees whose duties are not supervisory in nature. In other plants, however, particularly small plants, such work is a regular duty of the executive and is directly and closely related to his responsibility for the work performance of his subordinates and for the adequacy of the final product. Under such circumstances it is exempt work.

(e) *Examining, inspecting, checking.* Similarly, a supervisor who spot checks and examines the work of his subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to his managerial and supervisory functions. However, this kind of examining and checking must be distinguished from the kind which is normally performed by an "examiner," "checker," or "inspector," and which is really a production operation rather than a part of the supervisory function.

(f) *Machine watching.* Watching machines is another duty which may be exempt when performed by a supervisor under proper circumstances. Obviously the mere watching of machines in operation cannot be considered exempt work where, as in certain industries in which the machinery is largely automatic, it is an ordinary production function. Thus an employee who watches machines for the purpose of seeing that they operate properly or for the purpose of making repairs or adjustments is performing nonexempt work. On the other hand, a supervisor who watches the operation of the machinery in his department in the sense that he "keeps an eye out for trouble" is performing work which is directly and closely related to his managerial responsibilities. Making an occasional adjustment in the machinery under such circumstances is also exempt work.

(g) *Test in borderline cases.* A word of caution is necessary in connection with these illustrations. The record keeping, material distributing, set-up work, machine watching and adjusting, and inspecting, examining and checking referred to in the examples of exempt work are presumably the kind which are supervisory and managerial functions rather than merely "production" work. Frequently it is difficult to distinguish the managerial type from the type which is a production operation. In deciding such difficult cases it should be borne in mind that it is one of the objectives of § 541.1 to exclude from the definition foremen who hold "dual" or combination jobs.[1] Thus, if work of this kind takes up

[1] See discussion of working foremen in § 541.115.

a large part of the employee's time it would be evidence that management of the department is not the primary duty of the employee, that such work is a production operation rather than a function directly and closely related to the supervisory or managerial duties, and that the employee is in reality a combination foreman-"set-up" man, foreman-machine adjuster (or mechanic), or foreman-examiner, etc., rather than a bona fide executive.

§ 541.109 *Emergencies.* (a) Under certain occasional emergency conditions, work which is normally performed by nonexempt employees and is nonexempt in nature will be directly and closely related to the performance of the exempt functions of management and supervision and will therefore be exempt work. In effect, this means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not, because of the performance of such emergency work, lose the exemption. Bona fide executives include among their responsibilities the safety of the men under their supervision, the preservation and protection of the machinery or other property of the department or subdivision in their charge from damage due to unforeseen circumstances, and the prevention of widespread break-down in production. Consequently, when conditions beyond control arise which threaten the safety of the employees, or a cessation of production, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work and is not included in computing the 20 percent limit on nonexempt work.

(b) This rule is not applicable, however, to nonexempt work arising out of occurrences which are not beyond control or for which the employer can reasonably provide in the normal course of business.

(c) A few illustrations may be helpful in distinguishing routine work performed as a result of real emergencies of the kind for which no provision can practicably be made by the employer in advance of their occurrence and routine work which is not in this category. It is obvious that a mine superintendent who pitches in after an explosion and digs out the men who are trapped in the mine is still a bona fide executive during that week. On the other hand, the manager of a cleaning establishment who personally performs the cleaning operations on expensive garments because he fears damage to the fabrics if he allows his subordinates to handle them is not performing "emergency" work of the kind which can be considered exempt.

The performance of nonexempt work by executives during inventory-taking, during other periods of heavy work-load, or the handling of rush orders are the kinds of activities which the 20 percent tolerance is intended to cover. For example, pitching in on the production line in a canning plant during seasonal operations is not exempt "emergency" work even if the objective is to keep the food from spoiling. Maintenance work is not emergency work even if performed at night or during weekends. Relieving subordinates during rest or vacation periods cannot be considered in the nature of "emergency" work since the need for replacements can be anticipated. Whether replacing the subordinate at the work bench or production line during the first day or partial day of an illness would be considered exempt emergency work would depend upon the circumstances in the particular case. Such factors as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly would all have to be weighed.

(d) The regular cleaning up around machinery, even when necessary to prevent fire or explosion, is not "emergency" work. However, the removal by an executive of dirt or obstructions constituting a hazard to life or property need not be included in computing the 20 percent limitation if it is not reasonably practicable for anyone but the supervisor to perform the work and it is the kind of "emergency" which has not been recurring. The occasional performance of repair work in case of a break-down of machinery may be considered exempt work if the break-down is one which the employer cannot reasonably anticipate. However, recurring break-downs requiring frequent attention, such as that of an old belt or machine which breaks down repeatedly, are the kind for which provision could reasonably be made and repair of which must be considered as nonexempt.

§ 541.110 *Occasional tasks.* (a) In addition to the type of work which by its very nature is readily identifiable as being directly and closely related to the performance of the supervisory and management duties, there is another type of work which may be considered directly and closely related to the performance of these duties. In many establishments the proper management of a department requires the performance of a variety of occasional, infrequently recurring tasks which cannot practicably be performed by the production workers and are usually performed by the executive. These small tasks when viewed separately without regard to their relationship to the executive's over-all functions might appear to constitute nonexempt work. In reality they are the means of properly carrying out the employee's management functions and responsibilities in connection with men, materials, and production. The particular tasks are not specifically assigned to the "executive" but are performed by him in his discretion.

(b) It might be possible for the executive to take one of his subordinates away from his usual tasks, instruct and direct him in the work to be done, and wait for him to finish it. It would certainly not be practicable, however, to manage a department in this fashion. With respect to such occasional and relatively inconsequential tasks, it is the practice in industry generally for the executive to perform them rather than to delegate them to other persons. When any one of these tasks is done frequently, however, it takes on the character of a regular production function which could be performed by a nonexempt employee and must be counted as nonexempt work. In determining whether such work is directly and closely related to the performance of the management duties, consideration should be given to whether it is (1) the same as the work performed by any of the subordinates of the executive; or (2) a specifically assigned task of the executive employee; or (3) practicably delegable to nonexempt employees in the establishment; or (4) repetitive and frequently recurring.

§ 541.111 *Nonexempt work generally.* (a) As indicated in § 541.101 the term "nonexempt work," as used in this subpart, includes all work other than that described in paragraphs (a) through (d) of § 541.1 and the activities directly and closely related to such work.

(b) Nonexempt work is easily identifiable where, as in the usual case, it consists of work of the same nature as that performed by the nonexempt subordinates of the "executive." It is more difficult to identify in cases where supervisory employees spend a significant amount of time in activities not performed by any of their subordinates and not consisting of actual supervision and management. In such cases careful analysis of the employee's duties with reference to the phrase "directly and closely related to the performance of the activities described in paragraphs (a) through (d) of this section" will usually be necessary in arriving at a determination.

§ 541.112 *20 percent limitation on nonexempt work.* (a) An employee will not qualify for exemption as an executive if he devotes more than 20 percent of his hours worked in the workweek to nonexempt work. This test is applied on a workweek basis and the 20 percent is computed on the time worked by the employee.

(b) There are two special exceptions to this limitation—that relating to the employee in "sole charge" of an independent or branch establishment and that relating to an employee owning a 20 percent interest in the enterprise in which he is employed. These except the employee only from the 20 percent limitation on nonexempt work. They do not except the employee from any of the other requirements of § 541.1. Thus, while the 20 percent limitation on nonexempt work is not applicable, it is clear that the employee would not qualify for the exemption if he performs so much nonexempt work that he could no longer meet the requirement of § 541.1 (a), that his primary duty must consist of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof.

§ 541.113 *Sole-charge exception.* (a) An exception from the 20 percent limitation is provided in § 541.1 (e) for "an

employee who is in sole charge of an independent establishment or a physically separated branch establishment * * *." Such an employee is considered to be employed in a bona fide executive capacity even though he exceeds the 20 percent limitation on nonexempt work.

(b) The term "independent establishment" must be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one among several buildings located on a single or adjoining tracts of company property does not qualify for the exemption under this heading. In the case of a branch, there must be a true and complete physical separation from the main office.

(c) Since the employee must be in "sole" charge, only one person in any establishment can qualify as an executive under this exception, and then only if he is the top person in charge at that location.[2] Thus, it would not be applicable to an employee who is in charge of a branch establishment but whose superior makes his office on the premises. An example is a district manager who has over-all supervisory functions in relation to a number of branch offices, but makes his office at one of the branches. The branch manager at the branch where the district manager's office is located is not in "sole charge" of the establishment and does not come within the exception. This does not mean that the "sole charge" status of an employee will be considered lost because of an occasional visit to the branch office of the superior of the person in charge, or, in the case of an independent establishment, by the visit for a short period on 1 or 2 days a week of the proprietor or principal corporate officer of the establishment. In these situations, the sole-charge status of the employee in question will appear from the facts as to his functions, particularly in the intervals between visits. If, during these intervals, the decisions normally made by an executive in charge of a branch or an independent establishment are reserved for the superior, the employee is not in sole charge. If such decisions are not reserved for the superior, the sole-charge status will not be lost merely because of the superior's visits.

(d) In order to qualify for the exception the employee must ordinarily be in charge of all the company activities at the location where he is employed. If he is in charge of only a portion of the company's activities at his location, then he cannot be said to be in sole charge of an independent establishment or a physically separated branch establishment. In exceptional cases the Divisions have found that an executive employee may be in sole charge of all activities at a branch office except that one independent function which is not integrated with those managed by the executive is also performed at the branch. This one function is not important to the activities managed by the executive and constitutes only an insignificant portion of the employer's activities at that branch. A typical example of this type of situation is one in which "desk space" in a warehouse otherwise devoted to the storage and shipment of parts is assigned a salesman who reports to the sales manager or other company official located at the home office. Normally only one employee (at most two or three, but in any event an insignificant number when compared with the total number of persons employed at the branch) is engaged in the nonintegrated function for which the executive whose sole-charge status is in question is not responsible. Under such circumstances the employee does not lose his "sole-charge" status merely because of the desk-space assignment.

§ 541.114 *Exception for owners of 20 percent interest.* (a) An exception from the 20 percent limitation on nonexempt work is also provided for an employee "who owns at least a 20 percent interest in the enterprise in which he is employed." This provision recognizes the special status of a share-holder of an enterprise who is actively engaged in its management.

(b) The exception is available to an employee owning a bona fide 20 percent equity in the enterprise in which he is employed regardless of whether the business is a corporate or other type of organization.

§ 541.115 *Working foremen.* (a) The primary purpose of the exclusionary language placing a limitation on the amount of nonexempt work is to distinguish between the bona fide executive and the "working" foreman[3] or "working" supervisor who regularly performs "production" work or other work which is unrelated or only remotely related to his supervisory activities.

(b) One type of working foreman or working supervisor most commonly found in industry works alongside his subordinates. Such employees, sometimes known as straw-bosses, or gang or group leaders perform the same kind of work as that performed by their subordinates, and also carry on supervisory functions. Clearly, the work of the same nature as that performed by the employee's subordinates must be counted as nonexempt work and if the amount of such work performed is substantial[4] the exemption does not apply. A foreman in a dress shop, for example, who operates a sewing machine to produce the product is performing clearly nonexempt work. However, this should not be confused with the operation of a sewing machine by a foreman to instruct his subordinates in the making of a new product, such as a garment, before it goes into production.

(c) Another type of working foreman or working supervisor who cannot be classed as a bona fide executive is one who spends a substantial amount of time in work which, although not performed by his own subordinates, consists of ordinary production work or other routine, recurrent, repetitive tasks which are a regular part of his duties. Such an employee is in effect holding a dual job. He may be, for example, a combination foreman-production worker, supervisor-clerk, or foreman combined with some other skilled or unskilled occupation. His nonsupervisory duties in such instances are unrelated to anything he must do to supervise the employees under him or to manage the department. They are in many instances mere "fill-in" tasks performed because the job does not involve sufficient executive duties to occupy an employee's full time. In other instances the nonsupervisory, nonmanagerial duties may be the principal ones and the supervisory or managerial duties are subordinate and are assigned to the particular employee because it is more convenient to rest the responsibility for the first line of supervision in the hands of the person who performs these other duties.

Typical of employees in dual jobs which may involve a substantial amount of nonexempt work are: (1) Foremen or supervisors who also perform one or more of the "production" or "operating" functions, though no other employees in the plant perform such work. An example of this kind of employee is the foreman in a millinery or garment plant who is also the cutter, or the foreman in a garment factory who operates a multiple needle machine not requiring a full time operator; (2) foremen or supervisors who have as a regular part of their duties the adjustment, repair, or maintenance of machinery or equipment. Examples in this category are the foreman-fixer in the hosiery industry who devotes a considerable amount of time to making adjustments and repairs to the machines of his subordinates, or the planer-mill foreman who is also the "machine man" who repairs the machines and grinds the knives; (3) foremen or supervisors who perform clerical work other than the maintenance of the time and production records of their subordinates; for example, the foreman of the shipping room who makes out the bills of lading and other shipping records, the warehouse foreman who also acts as inventory clerk, the head shipper who also has charge of a finished goods stock room, assisting in placing goods on shelves and keeping perpetual inventory records, or the office manager, head bookkeeper, or chief clerk who performs routine bookkeeping. There is no doubt that the head bookkeeper, for example, who spends a substantial amount of his time keeping books of the same general nature as those kept by the other bookkeepers, even though his books are confidential in nature or cover different transactions from the books maintained by the under bookkeepers, is not primarily an executive employee and should not be so considered.

[2] It is possible for other persons in the same establishment to qualify for exemption as executive employees, but not under the exception from the nonexempt work limitation.

[3] The term "working" foreman is used in this subpart in the sense indicated in the text and should not be construed to mean only one who performs work similar to that performed by his subordinates.

[4] "Substantial", as used herein, means more than 20 percent. See discussion of the 20 percent limitation on nonexempt work in § 541.112.

§ 541.116 *Trainees, executive.* The exemption is applicable to an employee employed in a bona fide executive capacity and does not include employees training to become executives and not actually performing the duties of an executive.

§ 541.117 *Amount of salary required.* (a) Compensation on a salary basis at a rate of not less than $55 per week is required for exemption as an executive.[4] The $55 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $110, semimonthly on a salary basis of $119.17 or monthly on a salary basis of $238.33. However, the shortest period of payment which will meet the requirement of payment "on a salary basis" is a week.

(b) In Puerto Rico and the Virgin Islands, the salary test for exemption as an "executive" is $30 a week.[5]

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to executives on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.118 *Salary basis.* (a) An employee will be considered to be paid on a salary basis within the meaning of the regulations in Subpart A of this part, if under his employment agreement he regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of his compensation, which amount is not subject to reduction because of variations in the number of hours worked in the workweek or in the quality or quantity of the work performed. The employee must receive his full salary for any week in which he performs any work without regard to the number of days or hours worked.

(b) *Minimum guarantee plus extras.* It should be noted that the salary may consist of a predetermined amount constituting all or part of the employee's compensation. In other words, additional compensation besides the salary is not inconsistent with the salary basis of payment. The requirement will be met, for example, by a branch manager who receives a salary of $55 or more per week and, in addition, a commission of 1 percent of the branch sales. The requirement will also be met by a branch manager who receives a percentage of the sales or profits of his branch if the employment arrangement also includes a guarantee of at least the minimum weekly salary (or the equivalent for a monthly or other period) required by the regulations in Subpart A of this part. Another type of situation in which the requirement will be met is that of an employee paid on a daily or shift basis, if the employment arrangement includes a provision that he will receive not less than the amount specified in the regulations in Subpart A of this part in any week in which he performs any work. The test of payment on a salary basis will not be met, however, if the salary is divided into two parts for the purpose of circumventing the requirement that the full salary must be paid in any week in which any work is performed. For example, a salary of $100 a week may not arbitrarily be divided into a guaranteed minimum of $55 paid in each week in which any work is performed, and an additional $45 which is made subject to deductions.

(c) *Initial and terminal weeks.* Failure to pay the full salary in the initial or terminal week of employment is not considered inconsistent with the salary basis of payment. For this purpose, an extended voluntary leave of absence may be considered to come within this rule. In such weeks the payment of a proportionate part of the employee's salary for the time actually worked will meet the requirement. However, this should not be construed to mean that an employee is on a salary basis within the meaning of the regulations in Subpart A of this part if he is employed occasionally for a few days and is paid a proportionate part of the weekly salary when so employed. Moreover, even payment of the full weekly salary under such circumstances would not meet the requirement, since casual or occasional employment for a few days at a time is inconsistent with employment on a salary basis within the meaning of the regulations in Subpart A of this part.

§ 541.119 *Special proviso for high salaried executives.* (a) Section 541.1 contains a special proviso for managerial employees who are compensated on a salary basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities). Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (f) of § 541.1 if his primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof and includes customary and regular direction of the work of two or more other employees therein. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (f) of § 541.1.

(b) Mechanics, carpenters, linotype operators, or craftsmen of other kinds are not exempt under the proviso no matter how highly paid they might be.

EMPLOYEE EMPLOYED IN A BONA FIDE ADMINISTRATIVE CAPACITY

§ 541.200 *Definition of "administrative".* Section 541.2 defines the term "bona fide * * * administrative" as follows:

The term "employee employed in a bona fide * * * administrative * * * capacity" in section 13 (a) (1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general business operations of his employer or his employer's customers; and

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c) (1) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined in this subpart); or

(2) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(3) Who executes under only general supervision special assignments and tasks; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than $75 per week (or $200 per month if employed in Puerto Rico or the Virgin Islands) exclusive of board, lodging, or other facilities:

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all of the requirements of this section.

§ 541.201 *Types of administrative employees.* (a) Three types of employees are described in § 541.2 (c) who, if they meet the other tests in § 541.2, qualify for exemption as "administrative" employees.

(b) *Executive and administrative assistants.* The first type is the assistant to a proprietor or to an executive or administrative employee. In modern industrial practice there has been a steady and increasing use of persons who assist an executive in the performance of his duties without themselves having executive authority. Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, and administrative assistant. Generally speaking, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated.

(c) *Staff employees.* Employees included in the second alternative in the

[4] The validity of including a salary requirement in the regulations in Subpart A of this part has been sustained in a number of appellate court decisions. See, for example, *Walling* v. *Yeakley*, 140 F. (2d) 830 (CCA 10); *Helliwell* v. *Haberman*, 140 F. (2d) 833 (CCA 2); and *Walling* v. *Morris*, 155 F. (2d) 832 (CCA 6) [reversed on another point in 332 U. S. 442].

[5] Following a hearing on proposals to revise Subpart A, the presiding officer recommended that the $30 per week test for executives and the $200 per month requirement for administrative and professional employees in Puerto Rico and the Virgin Islands be retained in the regulations in Subpart A "until a study is made of prevailing conditions and further opportunity has been afforded to interested parties in these Territories to present their views." In accordance with this recommendation the revised regulations continued the salary tests previously contained in the regulations.

definition are those who can be described as staff rather than line employees, or as functional rather than departmental heads. They include among others employees who act as advisory specialists to the management. Typical examples of such advisory specialists are tax experts, insurance experts, sales research experts, wage rate analysts, investment consultants, foreign exchange consultants, and statisticians.

Also included are persons who are in charge of a so-called functional department, which may frequently be a one-man department. Typical examples of such employees are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations directors.

(d) *Those who perform special assignments.* The third group consists of persons who perform special assignments. Among them are to be found a number of persons whose work is performed away from the employer's place of business. Typical titles of such persons are traveling auditors, lease buyers, traveling inventory men, field representatives of utility companies, location managers of motion picture companies, and district gaugers for oil companies. It should be particularly noted that this is a field which is rife with honorific titles that do not adequately portray the nature of the employee's duties. The field representative of a utility company, for example, may be "a glorified serviceman."

This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, assistant buyers, customers' brokers in stock exchange firms, so-called account executives in advertising firms and contact or promotion men of various types.

(e) *Job titles insufficient as yardsticks.* The employees for whom exemption is sought under the term "administrative" have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining the true importance of an employee to the employer or his exempt or nonexempt status under the regulations in Subpart A of this part. Titles can be had cheaply and are of no determinative value. Thus, while there are supervisors of production control (whose decisions affect the welfare of large numbers of employees) who qualify for exemption under section 13 (a) (1), it is not hard to call a rate setter (whose functions are limited to timing certain operations and jotting down times on a standardized form) a "methods engineer" or a "production control supervisor."

Many more examples could be cited to show that titles are insufficient as yardsticks. As has been indicated previously, the exempt status of any particular employee must be determined on the basis of whether his duties, responsibilities and salary meet all the requirements of the appropriate section of the regulations in Subpart A of this part.

§ 541.202 *Categories of work.* (a) The work generally performed by employees who perform administrative tasks may be classified into the following general categories for purposes of the definition: [1] (1) The work specifically described in paragraphs (a), (b), and (c) of § 541.2; (2) routine work [2] which is directly and closely related to the performance of the work which is described in paragraphs (a), (b), and (c) of § 541.2; and (3) routine work which is not related or is only remotely related to the administrative duties.

(b) The work in category 1—that which is specifically described in § 541.2 as requiring the exercise of discretion and independent judgment—is clearly exempt in nature.

(c) Category 2 consists of work which if separated from the work in category 1, would appear to be routine, or on a fairly low level, and which does not itself require the exercise of discretion and independent judgment, but which has a direct and close relationship to the performance of the more important duties. The directness and closeness of this relationship may vary depending upon the nature of the job and the size and organization of the establishment in which the work is performed. This "directly and closely related" work includes routine work which necessarily arises out of the administrative duties, and routine work without which the employee's more important work cannot be performed properly. It also includes a variety of routine tasks which may not be essential to the proper performance of the more important duties but which are functionally related to them directly and closely. In this latter category are activities which an administrative employee may reasonably be expected to perform in connection with carrying out his administrative functions including duties which either facilitate or arise incidentally from the performance of such functions and are commonly performed in connection with them.

(d) These "directly and closely related" duties are distinguishable from the last group, category 3—those which are remotely related or completely unrelated to the more important tasks. The work in this last category is nonexempt and must not exceed the 20-percent limitation for nonexempt work if the exemption is to apply.

§ 541.203 *Nonmanual work.* (a) The requirement that the work performed by an exempt administrative employee must be office work or nonmanual field work restricts the exemption to "white-collar" employees who meet the tests. If the work performed is "office" work it is immaterial whether it is manual or nonmanual in nature. This is consistent with the intent to include within the term "administrative" only employees who are basically white-collar employees since the accepted usage of the term "white-collar" includes all office workers. Persons employed in the routine operation of office machines are engaged in office work within the meaning of § 541.2 (although they would not qualify as administrative employees since they do not meet the other requirements of § 541.2).

(b) Section 541.2 does not completely prohibit the performance of manual work by an "administrative" employee. The performance by an otherwise exempt administrative employee of some manual work which is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to "white-collar" employees. However, if the employee performs so much manual work (other than office work) that he cannot be said to be basically a "white-collar" employee he does not qualify for exemption as a bona fide administrative employee, even if the manual work he performs is directly and closely related to the work requiring the exercise of discretion and independent judgment. Thus, it is obvious that employees who spend most of their time in using tools, instruments, machinery, or other equipment, or in performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees within the meaning of § 541.2. An office employee, on the other hand, is a "white-collar" worker, and would not lose the exemption on the grounds that he is not primarily engaged in "nonmanual" work, although he would lose the exemption if he failed to meet any of the other requirements.

§ 541.204 *Field work.* There have been instances in the experience of the Divisions of "bona fide" administrative employees who performed nonmanual work involving considerable responsibility and requiring the exercise of discretion and independent judgment but who performed their work in a place which conceivably might not be characterized as either "office" or "field." Assuming such employees otherwise meet the requirements of § 541.2 they would be exempt. The phrase "field work" includes all work which is not "office" work, regardless of whether it is performed at or away from the employer's plant or other place of business. For example, an otherwise exempt efficiency expert would not be denied the exemption merely because he does a large part of his work in a plant, rather than in an office.

§ 541.205 *Directly related to management policies or general business operations.* (a) The phrase "directly related to management policies or general business operations of his employer or his employer's customers" describes those types of activities relating to the administrative operations of a business as distinguished from "production" work. In

[1] This classification is without regard to whether the work is manual or nonmanual. The problem of manual work as it affects the exemption of administrative employees is discussed in § 541.203.

[2] As used in this subpart the phrase "routine work" means work which does not require the exercise of discretion and independent judgment. It is not necessarily restricted to work which is repetitive in nature.

addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of his employer or his employer's customers.

(b) The administrative operations of the business include the work performed by so-called white-collar employees engaged in "servicing" a business as, for example, advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control. An employee performing such work is engaged in activities relating to the administrative operations of the business notwithstanding that he is employed as an administrative assistant to an executive in the production department of the business.

(c) As used to describe work of substantial importance to the management or operation of the business, the phrase "directly related to management policies or general business operations" is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. Employees whose work is "directly related" to management policies or to general business operations include those whose work affects policy or whose responsibility it is to execute or carry it out. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments or tasks relate to the operation of a particular segment of the business.

(1) It is not possible to lay down specific rules that will indicate the precise point at which work becomes of substantial importance to the management or operation of a business. It should be clear that the cashier of a bank performs work at a responsible level and may therefore be said to be performing work directly related to management policies or general business operations. On the other hand, the bank teller does not. Likewise it is clear that bookkeepers, secretaries, and clerks of various kinds hold the run-of-the-mine positions in any ordinary business and are not performing work directly related to management policies or general business operations. On the other hand, a tax consultant employed either by an individual company or by a firm of consultants is ordinarily doing work of substantial importance to the management or operation of a business.

(2) An employee performing routine clerical duties obviously is not performing work of substantial importance to the management or operation of the business even though he may exercise some measure of discretion and judgment as to the manner in which he performs his clerical tasks. A messenger boy who is entrusted with carrying large sums of money or securities cannot be said to be doing work of importance to the business even though serious consequences may flow from his neglect. An employee operating very expensive equipment may cause serious loss to his employer by the improper performance of his duties. An inspector, such as, for example, an inspector for an insurance company, may cause loss to his employer by the failure to perform his job properly. But such employees, obviously, are not performing work of such substantial importance to the management or operation of the business that it can be said to be "directly related to management policies or general business operations" as that phrase is used in § 541.2.

(3) Some firms employ persons whom they describe as "statisticians." If all such a person does, in effect, is to tabulate data, he is clearly not exempt. However, if such an employee makes analyses of data and draws conclusions which are important to the determination of, or which, in fact, determine financial or other policy, clearly he is doing work directly related to management policies or general business operations. Similarly, a personnel employee may be a clerk at a hiring window of a plant, or he may be a man who determines or affects personnel policies affecting all the workers in the plant. In the latter case, he is clearly doing work directly related to management policies or general business operations. These examples illustrate the two extremes. In each case, between these extreme types there are many employees whose work may be of substantial importance to the management or operation of the business, depending upon the particular facts.

(4) Another example of an employee whose work may be important to the welfare of the business is a buyer of a particular article or equipment. Where such work is of substantial importance to the management or operation of the business, even though it may be limited to purchasing for a particular department of the business, it is directly related to management policies or general business operations.

(5) The test of "directly related to management policies or general business operations" is also met by many persons employed as advisory specialists and consultants of various kinds, credit managers, safety directors, claim agents and adjusters, wage-rate analysts, tax experts, account executives of advertising agencies, customers' brokers in stock exchange firms, promotion men, and many others.

(6) It should be noted in this connection that an employer's volume of activities may make it necessary to employ a number of employees in some of these categories. The fact that there are a number of other employees of the same employer carrying out assignments of the same relative importance or performing identical work does not affect the determination of whether they meet this test so long as the work of each such employee is of substantial importance to the management or operation of the business.

(d) *Employer's customers.* Under § 541.2 the "management policies or general business operations" may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisors and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, or resident buyers. Such employees, if they meet the other requirements of § 541.2, qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers, or those of their employer.

§ 541.206 *Primary duty.* (a) The definition of "administrative" exempts only employees who are primarily engaged in the responsible work which is characteristic of employment in a bona fide administrative capacity. Thus, the employee must have as his primary duty office or nonmanual field work directly related to management policies or general business operations of his employer or his employer's customers. The words "primary duty" have the effect of placing major emphasis on the character of the employee's job as a whole.

(b) In determining whether an employee's exempt work meets the "primary duty" requirement, the principles explained in § 541.103 in the discussion of "primary duty" under the definition of "executive" are applicable.

§ 541.207 *Discretion and independent judgment.* (a) In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term as used in the regulations in Subpart A of this part, moreover, implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.[2]

(b) The term must be applied in the light of all the facts involved in the particular employment situation in which the question arises. It has been most frequently misunderstood and misapplied by employers and employees in cases involving the following: (1) Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards; and (2) misapplication of the term to employees making decisions relating to matters of little consequence.

(c) *Distinguished from skills and procedures.* (1) Perhaps the most frequent cause of misapplication of the term "discretion and independent judgment" is the failure to distinguish it from the use of skill in various respects. An employee who merely applies his knowl-

[2] Without actually attempting to define the term, the courts have given it this meaning in applying it in particular cases. See, for example, *Walling* v. *Sterling Ice Co.*, 69 F. Supp. 665, reversed on other grounds, 165 F. (2d) 265 (CCA 10). See also *Connell* v. *Delaware Aircraft Industries*, 55 Atl. (2d) 637.

edge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades, classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of § 541.2. This is true even if there is some leeway in reaching a conclusion, as when an acceptable standard includes a range or a tolerance above or below a specified standard.

(2) A typical example of the application of skills and procedures is ordinary inspection work of various kinds. Inspectors normally perform specialized work, along standardized lines involving well established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They may have some leeway in the performance of their work but only within closely prescribed limits. Employees of this type may make recommendations on the basis of the information they develop in the course of their inspections (as for example to accept or reject an insurance risk or a product manufactured to specifications), but these recommendations are based on the development of the facts as to whether there is conformity with the prescribed standards. In such cases a decision to depart from the prescribed standards or the permitted tolerance is typically made by the inspector's superior. The inspector is engaged in exercising skill rather than discretion and independent judgment within the meaning of the regulations in Subpart A of this part.

(3) A related group of employees usually called examiners or graders perform similar work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for the manual of standards does not convert the character of the work performed to work requiring the exercise of discretion and independent judgment as required by the regulations in Subpart A of this part. The mere fact that the employee uses his knowledge and experience does not change his decision, i. e., that the product does or does not conform with the established standard, into a real decision in a significant matter.

(4) For example, certain "graders" of lumber turn over each "stick" to see both sides, after which a crayon mark is made to indicate the grade. These lumber grades are well established and the employee's familiarity with them stems from his experience and training. Skill rather than discretion and independent judgment is exercised in grading the lumber. This does not necessarily mean, however, that all employees who grade lumber or other commodities are not exercising discretion and independent judgment. Grading of commodities for which there are no recognized or established standards may require the exercise of discretion and independent judgment as contemplated by the regulations in Subpart A of this part. In addition, in those situations in which an otherwise exempt buyer does grading, the grading, even though routine work, may be considered exempt if it is directly and closely related to the exempt buying.

(5) Another type of situation where skill in the application of techniques and procedures is sometimes confused with discretion and independent judgment is the "screening" of applicants by a personnel clerk. Typically, such an employee will interview applicants and obtain from them data regarding their qualifications and fitness for employment. These data may be entered on a form specially prepared for the purpose. The "screening" operation consists of rejecting all applicants who do not meet standards for the particular job or for employment by the company. The standards are usually set by the employee's superior or other company officials, and the decision to hire from the group of applicants who do meet the standards is similarly made by other company officials. It seems clear that such a personnel clerk does not exercise discretion and independent judgment as required by the regulations in Subpart A of this part. On the other hand an exempt personnel manager will often perform similar functions; that is, he will interview applicants to obtain the necessary data and eliminate applicants who are not qualified. The personnel manager will then hire one of the qualified applicants. Thus, when the interviewing and screening are performed by the personnel manager who does the hiring they constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(d) *Decisions in significant matters.* (1) The second type of situation in which some difficulty with this phrase has been experienced relates to the level or importance of the matters with respect to which the employee may make decisions. In one sense almost every employee is required to use some discretion and independent judgment. Thus, it is frequently left to a truck driver to decide which route to follow in going from one place to another; the shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders; and the bookkeeper may usually decide whether he will post first to one ledger rather than another. Yet it is obvious that these decisions do not constitute the exercise of discretion and independent judgment at the level contemplated by the regulations in Subpart A of this part. The Divisions have consistently taken the position that decisions of this nature concerning relatively unimportant matters are not those intended by the regulations in Subpart A of this part, but that the discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence. This interpretation has also been followed by courts in decisions involving the application of the regulations in this part, prior to amendment, to particular cases.

(2) It is not possible to state a general rule which will distinguish in each of the many thousands of possible factual situations between the making of real decisions in significant matters and the making of choices involving matters of little or no consequence. It should be clear, however, that the term "discretion and independent judgment," within the meaning of the regulations in Subpart A of this part, does not apply to the kinds of decisions normally made by clerical and similar types of employees. The term does apply to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise. The regulations in Subpart A of this part, however, do not require the exercise of discretion and independent judgment at so high a level. The regulations in Subpart A of this part also contemplate the kind of discretion and independent judgment exercised by an administrative assistant to an executive, who without specific instructions or prescribed procedures, arranges interviews and meetings, and handles callers and meetings himself where the executive's personal attention is not required. It includes the kind of discretion and independent judgment exercised by a customer's man in a brokerage house in deciding what recommendations to make to a customer for the purchase of securities. It may include the kind of discretion and judgment exercised by buyers, certain wholesale salesmen, representatives, and other contact persons who are given reasonable latitude in carrying on negotiations on behalf of their employers.

(e) *Final decisions not necessary.* (1) The term "discretion and independent judgment" as used in the regulations in Subpart A of this part does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment within the meaning of the regulations in Subpart A of this part. For example, the assistant to the president of a large corporation may regularly reply to correspondence addressed to the president. Typically, such an assistant will submit the more important replies to the president for review before they are sent out. Upon occasion, after review, the president may alter or discard the prepared reply and direct that another be sent instead. This action by the president

would not, however, destroy the exempt character of the assistant's function, and does not mean that he does not exercise discretion and independent judgment in answering correspondence and in deciding which replies may be sent out without review by the president.

(2) The policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization, may have the plan reviewed or revised by his superiors before it is submitted to the client. The purchasing agent may be required to consult with top management officials before making a purchase commitment for raw materials in excess of the contemplated plant needs for a stated period, say 6 months. These employees exercise discretion and independent judgment within the meaning of the regulations despite the fact that their decisions or recommendations are reviewed at a higher level.

(f) *Distinguished from loss through neglect.* A distinction must also be made between the exercise of discretion and independent judgment with respect to matters of consequence and the cases where serious consequences may result from the negligence of an employee, the failure to follow instructions or procedures, the improper application of skills, or the choice of the wrong techniques. The operator of a very intricate piece of machinery, for example, may cause a complete stoppage of production or a break-down of his very expensive machine merely by pressing the wrong button. A bank teller who is engaged in the receipt and disbursement of money at a teller's window and in related routine bookkeeping duties may, by crediting the wrong account with a deposit, cause his employer to suffer a large financial loss. An inspector charged with responsibility for loading oil onto a ship may, by not applying correct techniques, fail to notice the presence of foreign ingredients in the tank with resulting contamination of the cargo and serious loss to his employer. In these cases, the work of the employee does not require the exercise of discretion and independent judgment within the meaning of the regulations in subpart A of this part.

(g) *Customarily and regularly.* The work of an exempt administrative employee must require the exercise of discretion and independent judgment customarily and regularly. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional but which, of course, may be less than constant. The requirement will be met by the employee who normally and recurrently is called upon to exercise and does exercise discretion and independent judgment in the day-to-day performance of his duties. The requirement is not met by the occasional exercise of discretion and independent judgment.

§ 541.208 *Directly and closely related.* (a) As indicated in § 541.202, work which is directly and closely related to the performance of the work described in § 541.2 is considered exempt work. Some illustrations may be helpful in clarifying the differences between such work and work which is unrelated or only remotely related to the work described in § 541.2.

(b) For purposes of illustration, the case of a high salaried management consultant about whose exempt status as an administrative employee there is no doubt will be assumed. The particular employee is employed by a firm of consultants and performs work in which he customarily and regularly exercises discretion and independent judgment. The work consists primarily of analyzing, and recommending changes in, the business operations of his employer's client. This work falls in the category of exempt work described in § 541.2.

In the course of performing that work, the consultant makes extensive notes recording the flow of work and materials through the office and plant of the client. Standing alone or separated from the primary duty such note-making would be routine in nature. However, this is work without which the more important work cannot be performed properly. It is "directly and closely related" to the administrative work and is therefore exempt work. Upon his return to the office of his employer the consultant personally types his report and draws, first in rough and then in final form, a proposed table of organization to be submitted with it. Although all this work may not be essential to the proper performance of his more important work, it is all directly and closely related to that work and should be considered exempt. While it is possible to assign the typing and final drafting to nonexempt employees and in fact it is frequently the practice to do so, it is not required as a condition of exemption that it be so delegated.

Finally, if because this particular employee has a special skill in such work, he also drafts tables of organization proposed by other consultants, he would then be performing routine work wholly unrelated, or at best only remotely related, to his more important work. Under such conditions, the drafting is nonexempt.

(c) Another illustration is the credit manager who makes and administers the credit policy of his employer. Establishing credit limits for customers and authorizing the shipment of orders on credit, including the decisions to exceed or otherwise vary these limits in the case of particular customers, would be exempt work of the kind specifically described in § 541.2. Work which is directly and closely related to these exempt duties may include such activities as checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis and writing letters giving credit data and experience to other employers or credit agencies. On the other hand, any general office or bookkeeping work is nonexempt work. For instance, posting to the accounts receivable ledger would be only remotely related to his administrative work and must be considered nonexempt.

(d) One phase of the work of an administrative assistant to a bona fide executive or administrative employee provides another illustration. The work of determining whether to answer correspondence personally, call it to his superior's attention, or route it to someone else for reply requires the exercise of discretion and independent judgment and is exempt work of the kind described in § 541.2. Opening the mail for the purpose of reading it to make the decisions indicated will be directly and closely related to the administrative work described. However, merely opening mail and placing it unread before his superior or some other person would be related only remotely, if at all, to any work requiring the exercise of discretion and independent judgment.

(e) The following additional examples may also be of value in applying these principles. A traffic manager is employed to handle the company's transportation problems. The exempt work performed by such an employee would include planning the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common-carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise in transit and making the necessary rearrangements resulting from delays, damages, or irregularities in transit. This employee may also spend part of his time taking "city orders" (for local deliveries) over the telephone. The order-taking is a routine function not "directly and closely related" to the exempt work and must be considered nonexempt.

(f) An office manager who does not supervise two or more employees would not meet the requirements for exemption as an executive employee but may possibly qualify for exemption as an administrative employee. Such an employee may perform administrative duties, such as the execution of the employer's credit policy, the management of the company's traffic, purchasing, and other responsible office work requiring the customary and regular exercise of discretion and judgment, which are clearly exempt. On the other hand, this office manager may perform all the bookkeeping, prepare the confidential or regular payrolls, and send out monthly statements of account. These latter activities are not "directly and closely related" to the exempt functions and are not exempt.

§ 541.209 *20 percent limitation on nonexempt work.* (a) Under § 541.2 (d), an employee will not qualify for exemption as an administrative employee if he devotes more than 20 percent of his hours worked in the workweek to nonexempt work; that is, to activities which are not directly and closely related to the performance of the work described in § 541.2 (a) through (c).

(b) This test is applied on a workweek basis and the 20 percent is com-

puted on the time worked by the employee.

(c) The tolerance for nonexempt work allows the performance of nonexempt manual or nonmanual work within the 20 percent allowed for all types of nonexempt work.

§ 541.210 *Trainees, administrative.* The exemption is applicable to an employee employed in a bona fide administrative capacity and does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee.

§ 541.211 *Amount of salary or fees required.* (a) Compensation on a salary or fee basis at a rate of not less than $75 a week (exclusive of board, lodging, or other facilities) is required for exemption as an "administrative" employee. The requirement will be met if the employee is compensated biweekly on a salary basis of $150, semimonthly on a salary basis of $162.50, or monthly on a salary basis of $325.

(b) In Puerto Rico and the Virgin Islands the required compensation is $200 a month (exclusive of board, lodging, or other facilities) on a salary or fee basis.[4]

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations do not prohibit the sale of such facilities to administrative employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.212 *Salary basis.* The explanation of the salary basis of payment made in § 541.118 in connection with the definition of "executive" is also applicable in the definition of "administrative."

§ 541.213 *Fee basis.* The requirements for exemption as an administrative employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis. For a discussion of payment on a fee basis, see § 541.313.

§ 541.214 *Special proviso for high salaried administrative employees.* Section 541.2 contains a special proviso including within the definition of "administrative" an employee "who is compensated on a salary or fee basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general business operations of his employer or his employer's customers, which includes work requiring the exercise of discretion and independent judgment * * *." Such a highly paid employee is deemed to meet all the requirements in paragraphs (a) through (e) of § 541.2. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (e) of § 541.2.

[4] See footnote 6, § 541.117.

EMPLOYEE EMPLOYED IN A BONA FIDE PROFESSIONAL CAPACITY

§ 541.300 *Definition of "professional".* Section 541.3 defines the term "bona fide * * * professional" as follows:

The term "employee employed in a bona fide * * * professional * * * capacity" in section 13 (a) (1) of the act shall mean any employee:

(a) Whose primary duty consists of the performance of work—

(1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(2) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; and

(e) Who is compensated for his services on a salary or fee basis at a rate of not less than $75 per week (or $200 per month if employed in Puerto Rico or the Virgin Islands) exclusive of board, lodging, or other facilities: *Provided,* That this paragraph shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof:

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section.

§ 541.301 *General.* The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions which have a recognized status and which are based on the acquirement of professional knowledge through prolonged study. It also includes the artistic professions, such as acting or music. Since the test of the bona fide professional capacity of such employment is different in character from the test for persons in the learned professions, an alternative test for such employees is contained in the regulations, in addition to the requirements common to both groups.

§ 541.302 *Learned professions.* (a) The "learned" professions are described in § 541.3 (a) (1) as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual, or physical processes.

(b) The first element in the requirement is that the knowledge be of an advanced type. Thus, generally speaking, it must be knowledge which cannot be attained at the high-school level.

(c) Second, it must be knowledge in a field of science or learning. This serves to distinguish the professions from the mechanical arts where in some instances the knowledge is of a fairly advanced type, but not in a field of science or learning.

(d) The requisite knowledge, in the third place, must be customarily acquired by a prolonged course of specialized intellectual instruction and study. Here it should be noted that the word "customarily" has been used to meet a specific problem occurring in many industries. As is well-known, even in the classical profession of law, there are still a few practitioners who have gained their knowledge by home study and experience. Characteristically, the members of the profession are graduates of law schools, but some few of their fellow professionals whose status is equal to theirs, whose attainments are the same, and whose work is the same did not enjoy that opportunity. Such persons are not barred from the exemption. The word "customarily" implies that in the vast majority of cases the specific academic training is a prerequisite for entrance into the profession. It makes the exemption available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry, etc., but it does not include the members of such quasiprofessions as journalism in which the bulk of the employees have acquired their skill by experience rather than by any formal specialized training. It should be noted also that many employees in these quasiprofessions may qualify for exemption under other sections of the regulations in subpart A of this part or under the alternative paragraph of the "professional" definition applicable to the artistic fields.

(e) No need appears to translate the word "prolonged" into arithmetical terms. Generally speaking, the professions which meet this requirement will include law, medicine, accountancy, actuarial computation, engineering, architecture, various types of physical, chemical and biological sciences, teaching, and so forth. The typical symbol of the professional training and the best prima facie evidence of its possession is, of course, the appropriate academic degree, and in these professions an advanced academic degree is a standard (if not absolutely universal) prerequisite.

(f) *Accountants.* Many accountants are exempt as professional employees[1] (regardless of whether they are employed by public accounting firms or by other types of enterprises). However, exemption of accountants, as in the case of other occupational groups (see § 541.308), must be determined on the basis of the individual employee's duties and the other criteria in the regulations. It has been the Divisions' experience that certified public accountants who meet the salary requirement of the regulations will, except in unusual cases, meet the requirements of the professional exemption since they meet the tests contained in § 541.3. Similarly, accountants who are not certified public accountants may also be exempt as professional employees if they actually perform work which requires the consistent exercise of discretion and judgment and otherwise meet the tests prescribed in the definition of "professional" employee. Accounting clerks, junior accountants, and other accountants, on the other hand, normally perform a great deal of routine work which is not an essential part of and necessarily incident to any professional work which they may do. Where these facts are found such accountants are not exempt. The title "Junior Accountant," however, is not determinative of failure to qualify for exemption any more than the title "Senior Accountant" would necessarily imply that the employee is exempt.

§ 541.303 *Artistic professions.* (a) The requirements concerning the character of the artistic type of professional work are contained in § 541.3 (a) (2). Work of this type is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee.

(b) The work must be "in a recognized field of artistic endeavor." This includes such fields as music, writing, the theater, and the plastic and graphic arts.

(c) The work must be original and creative in character, as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training. In the field of music there should be little difficulty in ascertaining the application of this requirement. Musicians, composers, conductors, soloists, all are engaged in original and creative work within the sense of this definition. In the plastic and graphic arts the requirement is, generally speaking, met by painters who at most are given the subject matter of their painting. It is similarly met by cartoonists who are merely told the title or underlying concept of a cartoon and then must rely on their own creative powers to express the concept. It would not normally be met by a person who is employed as a copyist or as an "animator" of motion-picture cartoons, or as a retoucher of photographs since it is not believed that such work is properly described as creative in character.

In the field of writing the distinction is perhaps more difficult to draw. Obviously the requirement is met by essayists or novelists or scenario writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed). The requirement would also be met, generally speaking, by persons holding the more responsible writing positions in advertising agencies.

(d) Another requirement is that the employee be engaged in work "the result of which depends primarily on the invention, imagination, or talent of the employee." This requirement is easily met by a person employed as an actor, or a singer, or a violinist, or a short-story writer. In the case of newspaper employees the distinction here is similar to the distinction observed above in connection with the requirement that the work be "original and creative in character." Obviously the majority of reporters do work which depends primarily on intelligence, diligence, and accuracy. It is the minority whose work depends primarily on "invention, imagination, or talent." On the other hand, this requirement will normally be met by actors, musicians, painters, and other artists.

(e) *Radio announcers.* The determination of the exempt or nonexempt status of radio announcers as professional employees has been relatively difficult because the radio broadcasting industry is comparatively new in the field of entertainment and because of the merging of the artistic aspects of the job with the commercial. There is considerable variation in the type of work performed by various radio announcers, ranging from predominantly routine to predominantly exempt work. The wide variation in earnings as between individual radio announcers, from the highly paid "name" announcer on a national network who is greatly in demand by sponsors to the staff announcer paid a comparatively small salary in a small station, indicates not only great differences in personality, voice and manner, but also in some inherent special ability or talent which, while extremely difficult to define, is nevertheless real.

The duties which many announcers are called upon to perform include: Functioning as a master of ceremonies; playing dramatic, comedy or straight parts in a program; interviewing; conducting farm, fashion, and home economics programs; covering public events, such as sports programs, in which the announcer may be required to "ad lib" and describe current changing events; and acting as narrator and commentator. Such work is generally exempt. Work such as giving station identification and time signals, announcing the names of programs, and similar routine work is nonexempt work. In the field of radio entertainment as in other fields of artistic endeavor, the status of an employee as a bona fide professional under § 541.3 is in large part dependent upon whether his duties are original and creative in character, and whether they require invention, imagination or talent. The determination of whether a particular announcer is exempt as a professional employee must be based upon his individual duties and the amount of exempt and nonexempt work performed, as well as his compensation.

(f) *Newspaper writers and reporters.* The field of journalism also employs many exempt as well as many nonexempt employees under the same or similar job titles. Newspaper writers and reporters are the principal categories of employment in which this is found.

(1) Newspaper writers, with possible rare exceptions in certain highly technical fields, do not meet the requirements of § 541.3 (a) (1) for exemption as professional employees of the "learned" type. Exemption for newspaper writers as professional employees is normally available only under the provisions for professional employees of the "artistic" type. Newspaper writing of the exempt type must, therefore, be "predominantly original and creative in character." Only writing which is analytical, interpretative or highly individualized is considered to be creative in nature. (The writing of fiction to the extent that it may be found on a newspaper would also be considered as exempt work.) Newspaper writers commonly performing work which is original and creative within the meaning of § 541.3 are editorial writers, columnists, critics, and "topflight" writers of analytical and interpretative articles.

(2) The reporting of news, the rewriting of stories received from various sources, or the routine editorial work of a newspaper is not predominantly original and creative in character within the meaning of § 541.3 and must be considered as nonexempt work. Thus, a reporter or news writer ordinarily collects facts about news events by investigation, interview, or personal observation and writes stories reporting these events for publication, or submits the facts to a rewrite man or other editorial employee for story preparation. Such work is nonexempt work. The leg man, the reporter covering a police beat, the reporter sent out under specific instructions to cover a murder, fire, accident, ship arrival, convention, sport event, etc., are normally performing duties which are not professional in nature within the meaning of the act and § 541.3.

(3) Incidental interviewing or investigation, when it is performed as an essential part of and is necessarily incident to an employee's professional work, however, need not be counted as nonexempt work. Thus, if a dramatic critic interviews an actor and writes a story around the interview, the work of interviewing him and writing the story would not be considered as nonexempt work. However, a dramatic critic who is assigned to cover a routine news event such as a fire or a convention would be doing nonexempt work since covering the fire or the convention would not be necessary and incident to his work as a dramatic critic.

[1] Some accountants may qualify for exemption as bona fide administrative employees.

§ 541.304 *Primary duty.* For an explanation of the term "primary duty" see the discussion of this term under "executive" in § 541.103, and under "administrative" in § 541.206.

§ 541.305 *Discretion and judgment.* (a) Under § 541.3 a professional employee must perform work which requires the consistent exercise of discretion and judgment in its performance.

(b) A prime characteristic of professional work is the fact that the employee does apply his special knowledge or talents with discretion and judgment. Purely mechanical or routine work is not professional.

§ 541.306 *Predominantly intellectual and varied.* Section 541.3 requires that the employee be engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work. This test applies to the type of thinking which must be performed by the employee in question. While a doctor may make 20 physical examinations in the morning and perform in the course of his examinations essentially similar tests, it requires not only judgment and discretion on his part but a continual variety in his interpretion of the tests to perform satisfactory work. Likewise, although a professional chemist may make a series of similar tests, the problems presented will vary as will the deductions to be made therefrom. The work of the true professional is inherently varied even though similar outward actions may be performed.

§ 541.307 *Essential part of and necessarily incident to.* (a) Section 541.3 (d), it will noted, has the effect of including within the exempt work activities which are an essential part of and necessarily incident to the professional work described in paragraphs (a) through (c) of § 541.3. This provision recognizes the fact that there are professional employees whose work necessarily involves some of the actual routine physical tasks also performed by obviously nonexempt employees. For example, a chemist performing important and original experiments frequently finds it necessary to perform himself some of the most menial tasks in connection with the operation of his experiments, even though at times these menial tasks can be conveniently or properly assigned to laboratory assistants. See also the example of incidental interviewing or investigation in § 541.303 (f) (3).

(b) It should be noted that the test of whether routine work is exempt work is different in the definition of "professional" from that in the definition of "executive" and "administrative." Thus, while routine work will be exempt if it is "directly and closely related" to the performance of executive or administrative duties, work which is directly and closely related to the performance of the professional duties will not be exempt unless it is also "an essential part of and necessarily incident to" the professional work.

§ 541.308 *Nonexempt work generally.* (a) It has been the Divisions' experience that some employers erroneously believe that anyone employed in the field of accountancy, engineering, or other professional fields, will qualify for exemption as a professional employee by virtue of such employment. While there are many exempt employees in these fields, the exemption of any individual depends upon his duties and other qualifications.

(b) It is necessary to emphasize the fact that section 13 (a) (1) exempts "any employee employed in a bona fide * * * professional * * * capacity." It does not exempt all employees of professional employers, or all employees in industries having large numbers of professional members, or all employees in any particular occupation. Nor does it exempt, as such, those learning a profession. Moreover, it does not exempt persons with professional training, who are working in professional fields, but performing subprofessional or routine work. For example, in the field of library science there are large numbers of employees who are trained librarians but who, nevertheless, do not perform professional work or receive salaries commensurate with recognized professional status. The field of "engineering" has many persons with "engineer" titles, who are not professional engineers, as well as many who are trained in the engineering profession, but are actually working as trainees, junior engineers, or draftsmen.

§ 541.309 *20-percent nonexempt work limitation.* Time spent in nonexempt work, that is, work which is not an essential part of and necessarily incident to the exempt work, is limited to 20 percent of the time worked by the employee in the workweek.

§ 541.310 *Trainees, professional.* The exemption applies to an employee employed in a bona fide professional capacity and does not include trainees who are not actually performing the duties of a professional employee.

§ 541.311 *Amount of salary or fees required.* (a) Compensation on a salary or fee basis at a rate of not less than $75 per week (exclusive of board, lodging, or other facilities) is required for exemption as a "professional" employee. An employee will meet the requirement if he is paid a biweekly salary of $150, a semimonthly salary of $162.50, or a monthly salary of $325.

(b) In Puerto Rico and the Virgin Islands the required salary is $200 a month (exclusive of board, lodging, or other facilities) on a salary or fee basis.[2]

(c) The payment of the required salary must be exclusive of board, lodging, or other facilities; that is, free and clear. On the other hand, the regulations in Subpart A of this part do not prohibit the sale of such facilities to professional employees on a cash basis if they are negotiated in the same manner as similar transactions with other persons.

§ 541.312 *Salary basis.* The salary basis of payment is explained in § 541.118 in connection with the definition of "executive."

§ 541.313 *Fee basis.* (a) The requirements for exemption as a professional (or administrative) employee may be met by an employee who is compensated on a fee basis as well as by one who is paid on a salary basis.

(b) Little or no difficulty arises in determining whether a particular employment arrangement involves payment on a fee basis. Such arrangements are characterized by the payment of an agreed sum for a single job regardless of the time required for its completion. These payments in a sense resemble piecework payments with the important distinction that generally speaking a fee payment is made for the kind of job which is unique rather than for a series of jobs which are repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis. The type of payment contemplated in the regulations in Subpart A of this part is thus readily recognized.

(c) The adequacy of a fee payment—whether it amounts to payment at a rate of not less than $75 per week—can ordinarily be determined only after the time worked on the job has been determined. In determining whether payment is at the rate specified in the regulations in Subpart A of this part the amount paid to the employee will be tested by reference to a standard workweek of 40 hours. Thus, compliance will be tested in each case of a fee payment by determining whether the payment made is at a rate which would amount to at least $75 if 40 hours were worked.

(d) The following examples will illustrate the principle stated above:

(1) A singer receives $25 for a song on a 15-minute program (no rehearsal time is involved). Obviously the requirement will be met since the employee would earn $75 at this rate of pay in far less than 40 hours.

(2) An artist is paid $40 for a picture. Upon completion of the assignment, it is determined that the artist worked 20 hours. Since earnings at this rate would yield the artist $80 if 40 hours were worked, the requirement is met.

(3) An illustrator is assigned the illustration of a pamphlet at a fee of $100. When the job is completed, it is determined that the employee worked 60 hours. If he worked 40 hours at this rate, the employee would have earned only $66.67. The fee payment of $100 for work which required 60 hours to complete therefore does not meet the requirement of payment at a rate of $75 per week and the employee must be considered nonexempt. It follows that if in the performance of this assignment the illustrator worked in excess of 40 hours in any week, overtime rates must be paid. Whether or not he worked in excess of 40 hours in any week, records for such an employee would have to be kept in accordance with the regulations covering records for nonexempt employees (Part 516 of this chapter).

[2] See footnote 6, § 541.117.

§ 541.314 *Exception for physicians and lawyers.* A holder of a valid license or certificate permitting the practice of law or medicine or any of their branches, who is actually engaged in practicing the profession, is excepted from the salary or fee requirement. This exception applies only to the traditional professions of law and medicine and not to employees in related professions which merely service the professions of law or medicine. For example, in the case of medicine, the exception applies to physicians and other practitioners in the field of medical science and healing, such as dentists, or any of the medical specialties, but it does not include pharmacists, nurses, or other professions which service the medical profession.

§ 541.315 *Special proviso for high salaried professional employees.* The definition of "professional" contains a special proviso for employees who are compensated on a salary or fee basis (exclusive of board, lodging, or other facilities) at a rate of at least $100 per week. Under this proviso, the requirements for exemption in paragraphs (a) through (e) of § 541.3 will be deemed to be met by an employee who receives the higher salary or fees and "whose primary duty consists of the performance of work either requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor." Thus, the exemption will apply to highly paid employees employed either in one of the "learned" professions or in an "artistic" profession and doing primarily professional work. If an employee qualifies for exemption under this proviso, it is not necessary to test his qualifications in detail under paragraphs (a) through (e) of § 541.3.

EMPLOYEE EMPLOYED IN A BONA FIDE LOCAL RETAILING CAPACITY

§ 541.400 *Definition of "local retailing capacity."* Section 541.4 defines the term "bona fide * * * local retailing capacity" as follows:

The term "employee employed in a bona fide * * * local retailing capacity" in section 13 (a) (1) of the act shall mean any employee:

(a) Who customarily and regularly is engaged in—

(1) Making retail sales of goods or services of which more than 50 percent of the dollar volume are made within the State where his place of employment is located; or

(2) Performing work immediately incidental thereto, such as the wrapping or delivery of packages; and

(b) Whose hours of work of a nature other than that described in paragraphs (a) (1) or (a) (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer.

§ 541.401 *Exempt "local retailing" work.* (a) The work qualifying the employee for exemption under § 541.4 is the making of retail sales of goods or services, of which more than 50 percent of the dollar volume are made in the State where the employee's place of employment is located; and the performance of work immediately incidental to such retail sales work, including the wrapping and delivery of packages.

(b) The dollar volume test is based on the sales during a representative period.

(c) Section 541.4 includes retail sales of services as well as of goods. For example, counter clerks who accept tools for sharpening, or typewriters for repair as well as employees engaged in dispensing and serving food and drink for a consideration to patrons of a restaurant or dining room may, if the sales of these services are at retail, qualify for exemption.

(d) Exempt work includes not only the making of retail sales of goods or services but also the performance of work immediately incidental to such retail sales work. Work such as weighing the merchandise which is sold, wrapping the package for the customer, and delivering the merchandise is immediately incidental to retail sales work. Bookkeeping work relating to particular retail sales, such as, for example, the billing of a customer for retail sales, is immediately incidental to retail sales work.

(e) Making retail sales of services does not include the actual performance of the service. For example, the exemption is not available for the tool sharpener, typewriter repairman, or the cook and other kitchen employees who prepare food and drink for consumption by the patrons of a restaurant or dining room.

§ 541.402 *Nonexempt work.* Nonexempt work is that work which is neither the making of retail sales nor the performance of work immediately incidental to retail sales work. For example, janitor work does not involve making retail sales or performing work immediately incidental thereto.

§ 541.403 *20 percent limitation on nonexempt work.* Nonexempt work not to exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer is permitted. It should be noted that the 20 percent is not computed on the basis of the employee's own time, but rather upon the time worked by nonexempt employees of the employer who are performing the same kind of nonexempt work as that performed by the retail sales person. If there are no other employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week and the amount of nonexempt work allowed in such cases will be 8 hours a week.

EMPLOYEE EMPLOYED IN THE CAPACITY OF OUTSIDE SALESMAN

§ 541.500 *Definition of "outside salesman".* Section 541.5 defines the term "outside salesman" as follows:

The term "employee employed * * * in the capacity of outside salesman" in section 13 (a) (1) of the act shall mean any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in—

(1) Making sales within the meaning of section 3 (k) of the act; or

(2) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraphs (a) (1) or (a) (2) of this section do not exceed 20 percent of the hours worked in the workweek by nonexempt employees of the employer: *Provided,* That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work.

§ 541.501 *Making sales or obtaining orders.* (a) Section 541.5 requires that the employee be engaged in (1) making sales within the meaning of section 3 (k) of the act or (2) obtaining orders or contracts for services or for the use of facilities.

(b) Generally speaking, the Divisions have interpreted section 3 (k) of the act to include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Thus sales of automobiles, coffee, shoes, cigars, stocks, bonds, and insurance are construed as sales within the meaning of section 3 (k).

(c) It will be noted that the exempt work includes not only the sale of commodities, but also "obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer." "Obtaining orders or contracts * * * for the use of facilities" includes the selling of time on the radio, the solicitation of advertising for newspapers and other periodicals and the solicitation of freight for railroads and other transportation agencies.

(d) The word "services" extends the exemption as outside salesmen to employees who sell or take orders for a service, which is performed for the customer by someone other than the person taking the order. For example, it includes the salesman of a typewriter repair service who does not himself do the repairing. It also includes otherwise exempt outside salesmen who obtain orders for the laundering of the customer's own linens as well as those who obtain orders for the rental of the laundry's linens.

(e) The inclusion of the word "services" is not intended to exempt persons who, in a very loose sense, are sometimes described as selling "services." For example, it does not include persons such as service men even though they may sell the service which they themselves perform. Selling the service in such cases would be incidental to the servicing rather than the reverse. Nor does it include outside buyers, who in a very loose sense are sometimes described as selling their employer's "service" to the person from whom they obtain their goods. It is obvious that the relationship here is the reverse of that of salesman–customer.

§ 541.502 *Away from his employer's place of business.* (a) Section 541.5 requires that an outside salesman be customarily and regularly engaged "away from his employer's place or places of business." This requirement is based on the obvious connotation of the word

"outside" in the term "outside salesman." It would obviously lie beyond the scope of the Administrator's authority that "outside salesman" should be construed to include inside salesmen. Inside sales and other inside work (except such as is directly in conjunction with and incidental to outside sales and solicitations, as explained below) is nonexempt.

(b) Characteristically the outside salesman is one who makes his sales at his customer's place of business. This is the reverse of sales made by mail or telephone (except where the telephone is used merely as an adjunct to personal calls). Thus any fixed site, whether home or office, used by a salesman as a headquarters or for telephonic solicitation of sales must be construed as one of his employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. It should not be inferred from the foregoing that an outside salesman loses his exemption by displaying his samples in hotel sample rooms as he travels from city to city; these sample rooms should not be considered as his employer's places of business.

§ 541.503 *Incidental to and in conjunction with sales work.* Work performed "incidental to and in conjunction with the employee's own outside sales or solicitations" includes not only incidental deliveries and collections which are specifically mentioned in § 541.5 (b), but also any other work performed by the employee in furthering his own sales efforts. Work performed incidental to and in conjunction with the employee's own outside sales or solicitations would include, among other things, the writing of his sales reports, the revision of his own catalogue, the planning of his itinerary and attendance at sales conferences.

§ 541.504 *Promotion work.* (a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt work, depending upon the circumstances under which it is performed. Promotion men are not exempt as "outside salesmen." [1] However, any promotional work which is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is clearly exempt work. On the other hand, promotional work which is incidental to sales made, or to be made, by someone else cannot be considered as exempt work. Many persons are engaged in certain combinations of sales and promotional work or in certain types of promotional work having some of the characteristics of sales work while lacking others. The types of work involved include activities in borderline areas in which it is difficult to determine whether the work is sales or promotional. Where the work is promotional in nature it is sometimes difficult to determine whether it is incidental to the employee's own sales work.

[1] This discussion relates solely to the exemption under § 541.5, dealing with outside salesmen. Promotion men who receive the required salary and otherwise qualify, may be exempt as administrative employees.

(b) Typically, the problems presented involve distribution through jobbers (who employ their own salesmen) or through central warehouses of chain store organizations or cooperative retail buying associations. A manufacturer's representative in such cases visits the retailer, either alone or accompanied by the jobber's salesman. In some instances the manufacturer's representative may sell directly to the retailer; in others, he may urge the retailer to buy from the jobber.

This manufacturer's representative may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such persons can be considered salesmen only if they are actually employed for the purpose of and are engaged in making sales or obtaining orders or contracts. To the extent that they are engaged in promotional activities designed to stimulate sales which will be made by someone else the work must be considered nonexempt. With such variations in the methods of selling and promoting sales each case must be decided upon its facts. In borderline cases the test is whether the person is actually engaged in activities directed toward the consummation of his own sales, at least to the extent of obtaining a commitment to buy from the person to whom he is selling. If his efforts are directed toward stimulating the sales of his company generally rather than the consummation of his own specific sales his activities are not exempt. Incidental promotional activities may be tested by whether they are "performed incidental to and in conjunction with the employee's own outside sales or solicitations" or whether they are incidental to sales which will be made by someone else.

(c) (1) A few illustrations of typical situations will be of assistance in determining whether a particular type of work is exempt or nonexempt under § 541.5 One situation involves a manufacturer's representative who visits the retailer for the purpose of obtaining orders for his employer's product, but transmits any orders he obtains to the local jobber to be filled. In such a case the employee is performing sales work regardless of the fact that the order is filled by the jobber rather than directly by his own employer. The sale in this instance has been "consummated" in the sense that the salesman has obtained a commitment from the customer.

(2) Another typical situation involves facts similar to those described in the preceding illustration with the difference that the jobber's salesman accompanies the representative of the company whose product is being sold. The order in this instance is taken by the jobber's salesman after the manufacturer's representative has done the preliminary work which may include arranging the stock, putting up a display or poster, and talking to the retailer for the purpose of getting him to place the order for the product with the jobber's salesman. In this instance the sale is consummated by the jobber's salesman. The work performed by the manufacturer's representative is not incidental to sales made by himself and is not exempt work. Moreover, even if in a particular instance the sale is consummated by the manufacturer's representative it is necessary to examine the nature of the work performed by the representative to determine whether his promotional activities are directed toward paving the way for his own present and futures sales, or whether they are intended to stimulate the present and future sales of the jobber's salesman. If his work is related to his own sales it would be considered exempt work, while if it is directed toward stimulating sales by the jobber's representative it must be considered nonexempt work.

(3) Another type of situation involves representatives employed by utility companies engaged in furnishing gas or electricity to consumers. In a sense these representatives are employed for the purpose of "selling" the consumer an increased volume of the product of the utility. This "selling" is accomplished indirectly by persuading the consumer to purchase appliances which will result in a greater use of gas or electricity. Different methods are used by various companies. In some instances the utility representative after persuading the consumer to install a particular appliance may actually take the order for the appliance which is delivered from stock by his employer, or he may forward the order to an appliance dealer who then delivers it. In such cases the sales activity would be exempt, since it is directed at the consummation of a specific sale by the utility representative, the employer actually making the delivery in the one case, while in the other the sale is consummated in the sense that the representative obtains an order or commitment from the customer. In another type of situation the utility representative persuades the consumer to buy the appliance and he may even accompany the consumer to an appliance store where the retailer shows the appliance and takes the order. In such instances the utility representative is not an outside salesman since he does not consummate the sale or direct his efforts toward making the sale himself. Similarly, the utility representative is not exempt as an outside salesman if he merely persuades the consumer to purchase an appliance and the consumer then goes to an appliance dealer and places his order.

(4) Still another type of situation involves the company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, consults with the manager as to the requirements of the store, fills out a requisition for the quantity wanted and leaves it with the store manager to be transmitted to the central warehouse of the chain-store company which later ships the quantity requested. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Since the manufacturer's representative in this instance does not

consummate the sale nor direct his efforts toward the consummation of a sale (the store manager often has no authority to buy) this work must be counted as nonexempt.

§ 541.505 *Driver salesmen.* (a) A large group of employees known generally as "route salesmen," "distributor salesmen," or "driver salesmen" are commonly employed by distributors of carbonated beverages and beer, cigars, and numerous dairy and other food products. Typically, the driver salesman carries an assortment of the articles he sells and calls on the same customers at frequent and regular intervals. He confers with the customers, replenishes the customer's stock of goods and if he is introducing new varieties or new lines, endeavors to persuade the customer to buy the new products. He removes the empty bottles, cases, and other containers if these are to be returned to his employer and delivers the articles sold to the customer. The exemption is not defeated by the fact that the employee combines deliveries, collections, and other incidental work with his sales activities. It is clear that such an employee is employed for the purpose of making sales.

(b) On the other hand, an employee who is basically a truck driver and only incidentally or occasionally a salesman does not qualify for the exemption. Some employees occasionally described as outside salesmen, merely deliver orders in an amount exactly or approximately prearranged by custom or contractual arrangement and frequently make collections for the goods they deliver. Such employees are clearly not salesmen. Moreover, driving a truck or making collections is not exempt work when the truck is being used to deliver goods sold by someone else or when the collections are for sales made by another employee.

(c) In borderline cases, a determination of whether a driver salesman is employed for the purpose of making sales or is primarily a truck driver and only incidentally or occasionally a salesman, can be made in the light of facts that will illustrate the actual nature of the employee's work. Among factors to be considered are: the employer's specifications as to qualifications for hiring: sales training; attendance at sales conferences; method of payment; proportion of earnings directly attributable to sales effort; description of occupation in union contracts; comparison of duties of employees in question and of other employees engaged as (1) truck drivers and (2) salesmen; possession of a saleman's or solicitor's license when such license is required by law or ordinance; and presence or absence of customary or contractual prearrangements concerning amount to be delivered.

§ 541.506 *Nonexempt work generally.* Nonexempt work is that work which is not sales work and is not performed incidental to and in conjunction with the outside sales activities of the employee. It includes outside activities like meter-reading, which are not part of the sales process. Inside sales and all work incidental thereto are also nonexempt work. So is clerical or warehouse work which is not related to the employee's own sales. Similarly, the training of other salesmen is not exempt as outside sales work, with one exception. In some concerns it is the custom for the salesman to be accompanied by the trainee while actually making sales. Under such circumstances it appears that normally the trainer-salesman and the trainee make the various sales jointly, and both normally receive a commission thereon. In such instances, since both are engaged in making sales, the work of both is considered exempt work. However, the work of a helper who merely assists the salesman in transporting goods or samples and who is not directly concerned with effectuating the sale is nonexempt work.

§ 541.507 *20 percent limitation on nonexempt work.* Nonexempt work in the definition of "outside salesman" is limited to "20 percent of the hours worked in the workweek by nonexempt employees of the employer." The 20 percent is computed on the basis of the hours worked by nonexempt employees of the employer who perform the kind of nonexempt work performed by the outside salesman. If there are no employees of the employer performing such nonexempt work, the base to be taken is 40 hours a week, and the amount of nonexempt work allowed will be 8 hours a week.

§ 541.508 *Trainees, outside salesmen.* The exemption is applicable to an employee employed in the capacity of outside salesman and does not include employees training to become outside salesmen who are not actually performing the duties of an outside salesman.[2]

SPECIAL PROBLEMS

§ 541.600 *Combination exemptions.* The Divisions' position under the regulations in Subpart A of this part permits the "tacking" of exempt work under one section of the regulations in Subpart A to exempt work under another, so that a person who, for example, performs a combination of executive and professional work may qualify for exemption. In combination exemptions, however, the employee must meet the stricter of the requirements on salary and nonexempt work. For instance, an employee who devotes half of his time to work meeting the requirements of § 541.1 defining "executive" and the other half to work which is "administrative" in nature under § 541.2 would qualify for exemption if he meets the $75 a week test, which is the higher of the two salary requirements. Similarly, if the employee performs a combination of an executive's and an outside salesman's functions (regardless of which occupies most of his time) he must meet the salary requirement for executives ($55 a week). Also, the total hours of nonexempt work under the definition of "executive" together with the hours of work which would not be exempt if he were clearly an outside salesman, must not exceed either 20 percent of his own time or 20 percent of the "hours worked in the workweek by the nonexempt employees of the employer," whichever is the smaller amount.

Under these principles combinations of exemptions under the other sections of the regulations in Subpart A of this part are also permissible. In short, under the regulations in Subpart A, work which is "exempt" under one section of the regulations in Subpart A will not defeat the exemption under any other section.

NOTE: This subpart and Subpart A of this part (published in the issue of Saturday, December 24, 1949, 14 F. R. 7705) are effective as of January 25, 1950.

Signed at Washington, D. C., this 27th day of December 1949.

WM. R. MCCOMB,
Administrator.

[F. R. Doc. 49-10537; Filed, Dec. 27, 1949; 11:56 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF LABOR

Wage and Hour Division
Child Labor Branch

[29 CFR, Part 441]

[Child Labor Reg. 3, Amdt.]

EMPLOYMENT OF MINORS BETWEEN 14 AND 16 YEARS OF AGE

NOTICE OF PROPOSED RULE-MAKING

Child Labor Regulation No. 3, effective May 24, 1939 (4 F. R. 1983), delineates the occupations in which the employment (including suffering or permitting to work) by an employer of minor employees between 14 and 16 years of age for the periods and under the conditions therein specified shall not be deemed to be oppressive child labor within the meaning of the Fair Labor Standards Act of 1938.

The Fair Labor Standards Amendments of 1949 (63 Stat. 910) effective January 25, 1950, substantially modify and expand the child labor provisions of the Fair Labor Standards Act by directly prohibiting employment of oppressive child labor in commerce or in the production of goods for commerce. Before these amendments were enacted, the language of the act merely prohibited shipment or delivery for shipment in commerce of goods produced in establishments in or about which oppressive child labor was employed. The broadened coverage of the child labor provisions of the act necessitates amendment of Child Labor Regulation No. 3 for the purpose of delineating the occupations which, within the meaning of the act as amended, do not constitute oppressive

[2] See also § 541.506 in this connection.

child labor for minors 14 and 15 years of age.

In addition, the Fair Labor Standards Amendments of 1949 provide an exemption from the minimum wage, overtime and child labor provisions of the act for employees engaged in the delivery of newspapers to the consumer (section 13 (d) of the act, as amended). Since those employees engaged in the distribution of newspapers who deliver to the consumer are exempt from the coverage of the amended act, and since the special hours provisions contained in paragraph (g) of § 441.3 of Child Labor Regulation No. 3 are not believed needed for other minors engaged in newspaper distribution, a further amendment to the regulation is proposed for the purpose of deleting paragraph (g).

Accordingly, notice is hereby given pursuant to the Administrative Procedure Act, that under the authority conferred by section 3 (l) of the Fair Labor Standards Act, as amended, and Reorganization Plan No. 2 effective July 16, 1946, pursuant to the Reorganization Act of 1945 (59 Stat. 613), the Secretary of Labor proposes to amend Child Labor Regulation No. 3 so as to add to § 441.2 a new paragraph designated as paragraph (f) to read as follows:

§ 441.2 *Occupations.* This regulation shall apply to all occupations other than the following:

* * * * *

(f) Occupations in connection with:

(1) Transportation of persons or property by rail, highway, air, water, pipeline, or other means;

(2) Warehousing and storage;

(3) Communications and public utilities;

(4) Construction (including demolition and repair);

except such office (including ticket office) work, or sales work, in connection with subparagraphs (1), (2), (3), and (4) of this paragraph, as does not involve the performance of any duties on trains, motor vehicles, aircraft, vessels, or other media of transportation or at the actual site of construction operations.

It is further proposed to delete paragraphs (g) and (h) of § 441.3 and to amend paragraph (f) of § 441.3 to read as follows:

§ 441.3 *Periods and conditions of employment.* * * *

(f) Between 7 a. m. and 7 p. m. in any one day. This period shall be measured by applicable standard time, except that it shall be measured by applicable daylight saving time whenever such time is adopted as the official time of the community.

Prior to the adoption of such amendments, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Secretary of Labor, Washington 25, D. C., on or before January 10, 1950. Four copies of all written material should be submitted.

Signed at Washington, D. C., this 21st day of December 1949.

MAURICE J. TOBIN,
Secretary of Labor.

[F. R. Doc. 49–10464; Filed, Dec. 27, 1949; 8:47 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[Commissioner's Order 1]

DELEGATION OF AUTHORITY; ASSISTANCE TO SCHOOL DISTRICTS

DECEMBER 20, 1949.

Redelegation. Regional Directors of the Bureau of Reclamation may exercise the authority delegated to the Commissioner of Reclamation by the Secretary of the Interior in Order No. 2529 (14 F. R. 4862), dated August 1, 1949, under the act of June 29, 1948 (43 U. S. C. 385a) and legislation supplementary thereto, relating to the education of dependents of persons employed on the actual construction of Bureau of Reclamation projects, subject to applicable rules and regulations.

MICHAEL W. STRAUS,
Commissioner of Reclamation.

[F. R. Doc. 49–10451; Filed, Dec. 27, 1949; 8:49 a. m.]

[No. 6, Amdt. 2]

WASHINGTON

AMENDMENT OF CORRECTED PUBLIC NOTICE THAT WATER IS READY FOR DELIVERY TO PART OF LANDS OF ROZA DIVISION, YAKIMA PROJECT

DECEMBER 15, 1949.

Corrected Public Notice No. 6, dated March 4, 1946, and Amendment No. 1 thereof, dated August 6, 1948, as revised February 7, 1949, are hereby amended with respect to the lands listed below, as of November 6, 1945 (the date of the issuance of Public Notice No. 6) in the following manner:

Description	Irrigable area, private land	
	From—	To—
T. 14 N., R. 19 E. W. M.:	*Acres*	*Acres*
Sec. 32—NW¼ NE¼	19.2	21.7
T. 12 N. R. 20, E. W. M.:		
Sec. 31—SE¼ NW¼	12.3	15.0
T. 11 N. R. 20, E. W. M.:		
Sec. 5:		
NE¼ SW¼	1.0	0.5
NW¼ SE¼	33.2	32.2
Sec. 15—NE¼ NW¼	9.9	12.4
T. 11 N. R. 21, E. W. M.:		
Sec. 18:		
NE¼ SE¼	28.7	29.2
SE¼ SW¼	30.7	28.7

In all other respects Corrected Public Notice No. 6, dated March 4, 1946, remains in full force and effect.

MICHAEL W. STRAUS,
Commissioner.

[F. R. Doc. 49–10452; Filed, Dec. 27, 1949; 8:49 a. m.]

[No. 11, Amdt. 2]

WASHINGTON

AMENDMENT OF ANNOUNCEMENT THAT WATER IS READY FOR DELIVERY TO PART OF LANDS OF ROZA DIVISION, YAKIMA PROJECT; ANNOUNCEMENT OF CONSTRUCTION CHARGE INSTALLMENTS

DECEMBER 15, 1949.

Announcement No. 11, dated November 10, 1947, and Amendment No. 1, dated January 18, 1949, are hereby amended with respect to the lands listed below, as of November 10, 1947, in the following manner:

Description	Irrigable area, private land	
	From—	to—
T. 10 N. R. 22, E. W. M.:	*Acres*	*Acres*
Sec. 3, NW¼NE¼	35.5	40.1

In all other respects, Announcement No. 11, dated November 10, 1947, remains in full force and effect.

MICHAEL W. STRAUS,
Commissioner.

[F. R. Doc. 49–10453; Filed, Dec. 27, 1949; 8:48 a. m.]

[No. 12]

WASHINGTON

ANNOUNCEMENT THAT WATER IS READY FOR DELIVERY TO PART OF LANDS OF ROZA DIVISION, YAKIMA PROJECT; ANNOUNCEMENT OF CONSTRUCTION CHARGE INSTALLMENTS

DECEMBER 15, 1949.

Pursuant to the provisions of article 12 (d) of the contract of December 13, 1935, as amended by the contract of January 17, 1949, between the United States of America and the Roza Irrigation District, which relates to the construction of irrigation works, it is hereby announced:

In addition to the lands included in Block 1, as amended by Amendment No. 2 of Corrected Public Notice No. 6, dated December 15, 1949; in Block 2 and in Block 3, as amended by Amendment No. 2 of Public Notice No. 11, dated December 15, 1949, water will be available as of April 1, 1950, for the following tracts of

land in the Roza Irrigation District, which are hereby designated Block 4, to wit:

WILLAMETTE MERIDIAN

Description	Irrigable area private land (acres)
T. 9 N., R. 23 E:	
Sec. 1:	
NE¼NE¼	36.8
NW¼NE¼	36.6
SW¼NE¼	37.8
SE¼NE¼	37.7
NE¼NW¼	37.2
NW¼NW¼	29.1
SW¼NW¼	37.8
SE¼NW¼	38.0
Sec. 1:	
NE¼SW¼	38.8
NW¼SW¼	38.3
SW¼SW¼	38.8
SE¼SW¼	39.7
NE¼SE¼	40.0
NW¼SE¼	39.2
SW¼SE¼	38.9
SE¼SE¼	39.9
Sec. 2:	
NE¼NW¼	39.1
NW¼NW¼	33.3
NE¼SE¼	40.5
NW¼SE¼	28.6
SW¼SE¼	3.4
SE¼SE¼	38.8
Sec. 3:	
NE¼NE¼	32.4
NW¼NE¼	33.2
SW¼NE¼	10.6
SE¼NE¼	7.4
Sec. 11:	
NE¼NE¼	19.1
NW¼NE¼	1.7
Sec. 12:	
NE¼NE¼	40.1
NW¼NE¼	39.4
SW¼NE¼	39.4
SE¼NE¼	38.3
NE¼NW¼	25.5
NW¼NW¼	23.9
SE¼NW¼	31.5
NE¼SW¼	.5
NE¼SE¼	39.8
NW¼SE¼	26.0
SW¼SE¼	9.3
SE¼SE¼	32.5
Sec. 13:	
NE¼NE¼	14.8
SE¼NE¼	1.5
T. 10 N., R. 23 E.:	
Sec. 8:	
NE¼SE¼	35.8
SE¼SE¼	34.9
Sec. 9:	
SW¼NE¼	32.5
SE¼NE¼	15.3
NE¼NW¼	6.5
NW¼NW¼	13.3
SW¼NW¼	37.6
SE¼NW¼	36.8
NE¼SW¼	36.6
NW¼SW¼	37.5
SW¼SW¼	37.0
SE¼SW¼	36.8
NE¼SE¼	34.7
NW¼SE¼	34.7
SW¼SE¼	34.9
SE¼SE¼	35.0
Sec. 10:	
SW¼NW¼	0.4
NE¼SW¼	7.3
NW¼SW¼	30.0
SW¼SW¼	37.2
SE¼SW¼	37.8
NW¼SE¼	2.5
SW¼SE¼	16.2
Sec. 14:	
SW¼NW¼	23.0
SE¼NW¼	2.0
NE¼SW¼	23.5
NW¼SW¼	37.0
SW¼SW¼	40.6
SE¼SW¼	36.5
SW¼SE¼	3.0
Sec. 15:	
NE¼NE¼	30.4
NW¼NE¼	40.1
SW¼NE¼	36.7
SE¼NE¼	39.2
NE¼NW¼	38.0
NW¼NW¼	40.0
SW¼NW¼	34.0
SE¼NW¼	38.7
NE¼SW¼	35.0
NW¼SW¼	34.7
SW¼SW¼	33.1
SE¼SW¼	31.9
NE¼SE¼	36.8

Description	Irrigable area private land (acres)
T. 10 N., R. 23 E.—Con.	
Sec. 15—Con.	
NW¼SE¼	35.8
SW¼SE¼	35.5
SE¼SE¼	38.2
Sec. 16:	
NE¼NE¼	36.4
NW¼NE¼	34.1
SW¼NE¼	32.1
SE¼NE¼	34.7
NE¼NW¼	26.4
NW¼NW¼	34.0
SW¼NW¼	34.8
SE¼NW¼	32.7
NE¼SW¼	30.5
NW¼SW¼	36.4
SW¼SW¼	31.1
SE¼SW¼	37.6
NE¼SE¼	32.8
NW¼SE¼	32.0
SW¼SE¼	37.6
SE¼SE¼	28.8
Sec. 17:	
SE¼SE¼	39.7
Sec. 20:	
NE¼NE¼	16.7
Sec. 21:	
NE¼NE¼	28.7
NW¼NE¼	22.1
SW¼NE¼	36.3
SE¼NE¼	39.4
NE¼NW¼	33.9
NW¼NW¼	9.5
SE¼NW¼	2.3
NE¼SE¼	40.3
NW¼SE¼	12.0
SE¼SE¼	40.4
Sec. 22:	
NE¼NE¼	42.8
NW¼NE¼	41.1
SW¼NE¼	42.4
SE¼NE¼	41.9
NE¼NW¼	40.1
NW¼NW¼	34.6
SW¼NW¼	41.5
SE¼NW¼	41.8
NE¼SW¼	42.5
NW¼SW¼	42.3
SW¼SW¼	42.7
SE¼SW¼	43.1
NE¼SE¼	43.9
NW¼SE¼	42.8
SW¼SE¼	43.1
SE¼SE¼	41.1
Sec. 23:	
NE¼NE¼	2.7
NW¼NE¼	21.7
SW¼NE¼	34.5
SE¼NE¼	5.1
NE¼NW¼	42.1
NW¼NW¼	42.2
SW¼NW¼	42.7
SE¼NW¼	27.0
NE¼SW¼	32.0
NW¼SW¼	32.0
SW¼SW¼	27.5
SE¼SW¼	40.4
NE¼SE¼	31.7
NW¼SE¼	37.3
SW¼SE¼	39.6
SE¼SE¼	40.4
Sec. 24:	
SW¼NW¼	8.6
SE¼NW¼	1.2
NE¼SW¼	5.8
NW¼SW¼	27.1
SW¼SW¼	26.8
SE¼SW¼	6.7
Sec. 25:	
NE¼NW¼	4.7
NW¼NW¼	32.5
SE¼NW¼	24.1
SW¼NW¼	36.6
NE¼SW¼	9.5
NW¼SW¼	37.8
SW¼SW¼	21.0
Sec. 26:	
NE¼NE¼	39.6
NW¼NE¼	37.1
SW¼NE¼	37.5
SE¼NE¼	39.4
NE¼NW¼	37.9
NW¼NW¼	38.2
SW¼NW¼	38.8
SE¼NW¼	38.7
NE¼SW¼	38.7
NW¼SW¼	38.9
SW¼SW¼	39.1

WILLAMETTE MERIDIAN—Continued

Description	Irrigable area private land (acres)
T. 10 N., R. 23 E.—Con.	
Sec. 26—Con.	
SE¼SW¼	38.3
NE¼SE¼	38.8
NW¼SE¼	37.7
SW¼SE¼	35.7
SE¼SE¼	37.0
Sec. 27:	
NE¼NE¼	34.0
NW¼NE¼	41.6
SW¼NE¼	30.5
SE¼NE¼	38.2
NE¼NW¼	40.8
NW¼NW¼	42.6
SW¼NW¼	42.8
SE¼NW¼	42.1
NE¼SW¼	35.0
SW¼SW¼	19.7
SE¼SW¼	40.7
NE¼SE¼	41.8
NW¼SE¼	41.0
SW¼SE¼	41.9
SE¼SE¼	41.1
Sec. 34:	
NE¼NE¼	41.0
NW¼NE¼	42.8
SW¼NE¼	42.3
SE¼NE¼	41.8
NE¼NW¼	15.9
NW¼NW¼	4.9
NE¼SW¼	2.2
SE¼SW¼	.8
NE¼SE¼	41.0
NW¼SE¼	41.7
SW¼SE¼	37.3
SE¼SE¼	39.9
Sec. 35:	
NE¼NE¼	26.0
NW¼NE¼	38.5
SW¼NE¼	36.1
NE¼NW¼	38.3
NW¼NW¼	39.2
SW¼NW¼	39.3
SE¼NW¼	38.2
NE¼SW¼	38.4
NW¼SW¼	38.7
SW¼SW¼	39.4
SE¼SW¼	39.2
NE¼SE¼	28.6
NW¼SE¼	37.6
SW¼SE¼	39.0
SE¼SE¼	39.2
Sec. 36:	
NW¼NW¼	2.8
SW¼NW¼	6.2
SE¼NW¼	2.9
NE¼SW¼	39.9
NW¼SW¼	32.9
SW¼SW¼	39.1
SE¼SW¼	38.4
NE¼SE¼	29.5
NW¼SE¼	38.9
SW¼SE¼	37.1
SE¼SE¼	40.2
T. 9 N., R. 24 E.:	
Sec. 4:	
SW¼SW¼	6.0
SE¼SW¼	.3
Sec. 5:	
NW¼NW¼	1.1
SW¼NW¼	22.1
SE¼NW¼	1.6
NE¼SW¼	35.3
NW¼SW¼	40.0
SW¼SW¼	39.3
SE¼SW¼	39.6
NE¼SE¼	.3
NW¼SE¼	10.5
SW¼SE¼	40.4
SE¼SE¼	26.0
Sec. 6:	
NE¼NW¼	40.3
NW¼NW¼	41.6
SW¼NW¼	43.5
SE¼NW¼	39.2
NE¼SW¼	38.1
NW¼SW¼	41.7
SW¼SW¼	43.2
SE¼SW¼	37.2
NE¼SE¼	39.7
NW¼SE¼	39.3
SW¼SE¼	38.4
SE¼SE¼	38.6
Sec. 7:	
NE¼NE¼	40.5
NW¼NE¼	38.3
SW¼NE¼	37.5
SE¼NE¼	36.6
NE¼NW¼	40.0
NW¼NW¼	42.6
SW¼NW¼	43.0
SE¼NW¼	39.2
NE¼SW¼	38.4
NW¼SW¼	43.1

Description	Irrigable area private land (acres)
T. 9 N., R. 24 E.—Con.	
Sec. 7—Con.	
SW¼SW¼	43.3
SE¼SW¼	40.1
NE¼SE¼	33.5
NW¼SE¼	33.5
SW¼SE¼	40.2
SE¼SE¼	39.3
Sec. 8:	
NE¼NE¼	39.2
NW¼NE¼	40.2
SW¼NE¼	39.0
SE¼NE¼	39.2
NE¼NW¼	40.2
NW¼NW¼	40.3
SW¼NW¼	40.2
SE¼NW¼	40.0
NE¼SW¼	39.2
NW¼SW¼	37.7
SW¼SW¼	38.7
SE¼SW¼	39.7
NE¼SE¼	39.2
NW¼SE¼	39.3
SW¼SE¼	39.6
SE¼SE¼	39.3
Sec. 9:	
NW¼NE¼	2.0
SW¼NE¼	38.4
SE¼NE¼	25.0
NE¼NW¼	28.4
NW¼NW¼	36.5
SW¼NW¼	39.7
SE¼NW¼	39.6
NE¼SW¼	39.6
NW¼SW¼	39.7
SW¼SW¼	39.8
SE¼SW¼	39.8
NE¼SE¼	39.2
NW¼SE¼	39.8
SW¼SE¼	40.1
SE¼SE¼	39.0
Sec. 10:	
SW¼NE¼	31.2
SE¼NE¼	18.4
NW¼NW¼	2.2
SW¼NW¼	35.3
SE¼NW¼	32.7
NE¼SW¼	38.2
NW¼SW¼	39.5
SW¼SW¼	40.3
SE¼SW¼	39.6
NE¼SE¼	38.5
NW¼SE¼	39.0
SW¼SE¼	37.8
SE¼SE¼	38.7
Sec. 11:	
SW¼NE¼	4.9
SW¼NW¼	19.6
SE¼NW¼	13.4
NE¼SW¼	38.3
NW¼SW¼	39.6
SW¼SW¼	39.4
SE¼SW¼	38.9
NE¼SE¼	35.4
NW¼SE¼	39.5
SW¼SE¼	40.2
SE¼SE¼	40.7
Sec. 12:	
NE¼NE¼	1.7
NW¼NE¼	1.7
SW¼NE¼	29.4
SE¼NE¼	21.9
NE¼NW¼	5.1
NW¼NW¼	2.0
SW¼NW¼	1.8
SE¼NW¼	20.1
NE¼SW¼	32.5
NW¼SW¼	27.1
SW¼SW¼	40.2
SE¼SW¼	40.9
NE¼SE¼	28.2
NW¼SE¼	37.2
SW¼SE¼	40.5
SE¼SE¼	36.9
Sec. 13:	
NE¼NE¼	39.5
NW¼NE¼	41.0
SW¼NE¼	40.1
SE¼NE¼	40.7
NE¼NW¼	40.0
NW¼NW¼	39.0
SW¼NW¼	40.6
SE¼NW¼	40.5
NE¼SW¼	38.6
NW¼SW¼	40.7
SW¼SW¼	14.3
SE¼SW¼	39.8
NE¼SE¼	38.0
NW¼SE¼	38.2
SW¼SE¼	37.0
SE¼SE¼	20.5
Sec. 14:	
NE¼SW¼	21.5
NW¼SW¼	39.6

WILLAMETTE MERIDIAN—Continued

Description	Irrigable area private land (acres)
T. 9 N., R. 24 E.—Con.	
Sec. 14—Con.	
SW¼SW¼	38.5
SE¼SW¼	24.2
NE¼SE¼	34.6
NW¼SE¼	19.1
SW¼SE¼	3.9
SE¼SE¼	1.6
Sec. 15:	
NE¼NE¼	40.6
NW¼NE¼	39.7
SW¼NE¼	40.3
SE¼NE¼	40.0
NE¼NW¼	39.9
NW¼NW¼	41.0
SW¼NW¼	40.4
SE¼NW¼	39.5
NE¼SW¼	39.6
NW¼SW¼	40.4
SW¼SW¼	40.1
SE¼SW¼	39.5
NE¼SE¼	39.8
NW¼SE¼	39.0
SW¼SE¼	39.7
SE¼SE¼	38.9
Sec. 16:	
NE¼NE¼	40.7
NW¼NE¼	39.7
SW¼NE¼	39.5
SE¼NE¼	40.7
NE¼NW¼	40.5
NW¼NW¼	40.7
SW¼NW¼	40.3
SE¼NW¼	40.7
NE¼SW¼	40.5
NW¼SW¼	39.6
SW¼SW¼	40.0
SE¼SW¼	40.5
NE¼SE¼	37.5
NW¼SE¼	40.0
SW¼SE¼	39.4
SE¼SE¼	40.2
Sec. 17:	
NE¼NE¼	39.8
NW¼NE¼	39.9
SW¼NE¼	37.6
SE¼NE¼	38.3
NE¼NW¼	38.3
NW¼NW¼	37.7
SW¼NW¼	38.4
SE¼NW¼	37.8
NE¼SW¼	39.1
NW¼SW¼	38.6
SW¼SW¼	39.8
SE¼SW¼	39.7
NE¼SE¼	37.8
NW¼SE¼	40.2
SW¼SE¼	38.0
SE¼SE¼	37.7
Sec. 18:	
NE¼NE¼	38.4
NW¼NE¼	39.5
SW¼NE¼	40.2
SE¼NE¼	39.3
NE¼NW¼	40.0
NW¼NW¼	39.7
SW¼NW¼	36.5
SE¼NW¼	40.2
NE¼SW¼	32.6
NW¼SW¼	.8
SE¼SW¼	3.4
NE¼SE¼	39.5
NW¼SE¼	39.4
SW¼SE¼	24.0
SE¼SE¼	39.2
Sec. 19:	
NE¼NE¼	16.7
NW¼NE¼	.7
Sec. 20:	
NE¼NE¼	38.5
NW¼NE¼	38.1
SW¼NE¼	39.8
SE¼NE¼	39.1
NE¼NW¼	29.8
NW¼NW¼	39.6
SW¼NW¼	3.8
NE¼SE¼	21.6
NW¼SE¼	18.5
SW¼SE¼	9.4
Sec. 21:	
NE¼NE¼	40.3
NW¼NE¼	37.1
SW¼NE¼	40.0
SE¼NE¼	39.3
NE¼NW¼	36.9
NW¼NW¼	38.2
SW¼NW¼	39.2
SE¼NW¼	40.5
NE¼SW¼	32.9
NW¼SW¼	34.1
SE¼SW¼	1.8
NE¼SE¼	29.4
NW¼SE¼	36.9
SW¼SE¼	1.8

Description	Irrigable area private land (acres)
T. 9 N., R. 24 E.—Con.	
Sec. 21—Con.	
SE¼SE¼	0.4
Sec. 22:	
NE¼NE¼	41.9
NW¼NE¼	41.3
SW¼NE¼	41.2
SE¼NE¼	42.1
NE¼NW¼	40.6
NW¼NW¼	39.7
SW¼NW¼	39.9
SE¼NW¼	40.8
NE¼SW¼	30.1
NW¼SW¼	38.8
NE¼SE¼	35.9
NW¼SE¼	37.5
SW¼SE¼	3.7
SE¼SE¼	.2
Sec. 23:	
NE¼NE¼	35.7
NW¼NE¼	39.6
SW¼NE¼	9.4
SE¼NE¼	11.1
NE¼NW¼	35.9
NW¼NW¼	42.6
SW¼NW¼	39.4
SE¼NW¼	30.0
Sec. 24:	
NE¼NE¼	5.7
NW¼NE¼	25.5
NE¼NW¼	39.9
NW¼NW¼	39.4
SW¼NW¼	11.5
SE¼NW¼	1.2
T. 10 N., R. 24 E.:	
Sec. 31:	
NE¼SW¼	.5
NW¼SW¼	25.8
SW¼SW¼	43.8
SE¼SW¼	22.0
NE¼SE¼	.2
SW¼SE¼	.4
SE¼SE¼	15.9
T. 9 N., R. 25 E.:	
Sec. 7:	
SW¼NE¼	23.4
SE¼NE¼	5.1
SW¼NW¼	22.5
SE¼NW¼	29.6
NE¼SW¼	25.2
NW¼SW¼	44.8
SW¼SW¼	35.3
SE¼SW¼	30.6
NE¼SE¼	29.8
NW¼SE¼	30.0
SW¼SE¼	37.8
SE¼SE¼	41.3
Sec. 8:	
SW¼NE¼	6.1
SE¼NE¼	8.5
NE¼SW¼	9.3
NW¼SW¼	12.7
SW¼SW¼	39.8
SE¼SW¼	37.8
NE¼SE¼	32.0
NW¼SE¼	17.1
SW¼SE¼	37.2
SE¼SE¼	38.1
Sec. 9:	
SW¼NW¼	3.1
SE¼NW¼	1.2
NE¼SW¼	21.8
NW¼SW¼	31.7
SW¼SW¼	37.7
SE¼SW¼	29.8
NE¼SE¼	31.5
NW¼SE¼	26.7
SW¼SE¼	35.5
SE¼SE¼	35.3
Sec. 10:	
NW¼SW¼	25.1
SW¼SW¼	40.7
Sec. 15:	
NW¼NW¼	31.6
SW¼NW¼	27.6
NW¼SW¼	15.4
Sec. 16:	
NE¼NE¼	26.4
NW¼NE¼	28.8
SW¼NE¼	18.9
SE¼NE¼	18.6
NE¼NW¼	18.5
NW¼NW¼	15.2
SW¼NW¼	39.2
SE¼NW¼	25.4
NE¼SW¼	25.6
NW¼SW¼	25.9
SW¼SW¼	22.3
Sec. 17:	
NE¼NE¼	36.4
NW¼NE¼	28.0
SW¼NE¼	26.6
SE¼NE¼	38.5
NE¼NW¼	21.0

WILLAMETTE MERIDIAN—Continued

Description	Irrigable area private land (acres)	Description	Irrigable area private land (acres)
T. 9 N., R. 25 E.—Con.		T. 9 N., R. 25 E.—Con.	
Sec. 17—Con.		Sec. 18—Con.	
NW¼NW¼	33.7	NE¼NW¼	32.7
SW¼NW¼	19.4	NW¼NW¼	42.4
SE¼NW¼	12.8	SW¼NW¼	41.6
NE¼SW¼	40.0	SE¼NW¼	40.4
NW¼SW¼	39.5	NE¼SW¼	39.6
SW¼SW¼	8.5	NW¼SW¼	42.9
SE¼SW¼	14.4	SW¼SW¼	34.3
NE¼SE¼	25.5	SE¼SW¼	23.2
NW¼SE¼	12.2	NE¼SE¼	38.8
SW¼SE¼	2.9	NW¼SE¼	38.5
Sec. 18:		SW¼SE¼	21.3
NE¼NE¼	27.8	SE¼SE¼	15.4
NW¼NE¼	29.8		
SW¼NE¼	39.4	Total irrigable area	17,976.2
SE¼NE¼	36.9		

The combined contractual obligations of the Roza Irrigation District to the United States of America total $23,500,000. Of this amount, $21,000,000 is covered by the contract of December 13, 1935, as amended, in respect to the construction of irrigation works, exclusive of storage, and $2,500,000 is covered by the contract of July 8, 1921, as amended, in respect to the District's proportionate share of Yakima Project water storage.

The present estimate of the construction charge per irrigable acre for the works built and to be built, and for the proportionate share of storage, under said contracts and amendments thereof is hereby announced as $326.39 per acre. This per acre construction charge is based upon the contractual obligations set forth above and is subject to readjustment upon completion or termination of the construction program for the project works and the ascertainment of the actual cost thereof, and is subject to increase or decrease to the end that the District shall pay to the United States the full construction cost as finally determined by the Secretary of the Interior.

The first semi-annual installment of the construction charge payable on account of the lands in Block 4 for the distribution system will be $1.55 per irrigable acre, as the irrigable acreage is shown on the above list of lands, and will be due and payable by the District to the United States on December 31, 1950. Subsequent semi-annual installments will be due on June 30 and December 31 of each year, beginning with the year 1951. The last of the seventy-eight (78) semi-annual installments shall be due and payable within forty (40) years from the date of this notice. The amounts of the remaining seventy-seven (77) installments will be determined and announced by a subsequent notice or notices.

The fourth and fifth installments of the construction charge payable on account of the lands in Block 3 for the distribution system will be $1.55 per irrigable acre and will be due on June 30, 1950, and December 31, 1950, respectively. The amounts of the remaining seventy-three (73) installments to be paid on account of these lands will be determined and announced by a subsequent notice or notices.

The sixth and seventh installments of the construction charge payable on account of the lands in Block 2 for the distribution system will be $1.55 per irrigable acre and will be due on June 30, 1950, and December 31, 1950, respectively. The amounts of the remaining seventy-one (71) installments payable on account of these lands will be determined and announced by a subsequent notice or notices.

The eighth and ninth installments of the construction charge payable on account of the lands in Block 1 for the distribution system will be $1.55 per irrigable acre and will be due on June 30, 1950, and December 31, 1950, respectively. The amounts of the remaining sixty-nine (69) installments payable on account of these lands will be determined and announced by a subsequent notice or notices.

These installments are in addition to the semi-annual installments of construction charges for the District's proportionate share of Yakima Project water storage as announced on November 6, 1945.

MICHAEL W. STRAUS,
Commissioner.

[F. R. Doc. 49-10454; Filed, Dec. 27, 1949; 8:48 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 3346]

TRANSCONTINENTAL & WESTERN AIR, INC., V. SEABOARD & WESTERN AIRLINES, INC.

NOTICE OF ORAL ARGUMENT

In the matter of the complaint of Transcontinental & Western Air, Inc., v. Seaboard & Western Airlines, Inc.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, particularly sections 1002 and 1004 (a) of said act, that oral argument in the above-indicated proceeding is assigned to be heard January 12, 1950, at 10:00 a. m., e. s. t., in Room 5042, Commerce Building, Fourteenth Street and Constitution Avenue NW., Washington, D. C., before the Board.

Dated at Washington, D. C., December 22, 1949.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 49-10473; Filed, Dec. 27, 1949; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-812, G-813, G-814, G-816]

UNITED FUEL GAS CO. ET AL.

NOTICE OF MODIFICATION ORDER

DECEMBER 21, 1949.

In the matters of United Fuel Gas Company, Docket No. G-812; Huntington Development and Gas Company, Docket No. G-813; Warfield Natural Gas Company, Docket No. G-814; Cincinnati Gas Transportation Company, Docket No. G-816.

Notice is hereby given that, on December 16, 1949, the Federal Power Commission issued its order entered December 14, 1949, modifying order issued February 5, 1947, notice of which was published in the FEDERAL REGISTER on February 11, 1947 (12 F. R. 969), by eliminating Paragraph (B) of said latter order granting authority to reclassify and adjust depreciation, depletion and amortization reserves, in the above-designated matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-10459; Filed, Dec. 27, 1949; 8:47 a. m.]

[Docket No. G-1247, G-1253—G-1256, G-1280]

MANUFACTURERS LIGHT AND HEAT CO. ET AL

NOTICE OF OPINION NO. 188 AND FINDINGS AND ORDERS ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

DECEMBER 21, 1949.

In the matters of The Manufacturers Light and Heat Company, Docket No. G-1247; Lancaster County Gas Company, Docket No. G-1253; The Harrisburg Gas Company, Docket No. G-1254; Allentown-Bethlehem Gas Company, Docket No. G-1255; Consumers Gas Company, Docket No. G-1256; Texas Eastern Transmission Corporation, Docket No. G-1280.

Notice is hereby given that, on December 19, 1949, the Federal Power Commission issued its Opinion No. 188 and findings and orders entered December 14, 1949, issuing certificates of public convenience and necessity in the above-designated matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-10460; Filed, Dec. 27, 1949; 8:47 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 24745]

POTATOES AND ONIONS FROM TEXAS TO ILLINOIS AND IOWA

APPLICATION FOR RELIEF

DECEMBER 22, 1949.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3752.

Commodities involved: Potatoes and onions, carloads.

From: Points in Texas.

To: Points in Illinois and Iowa.

Grounds for relief: Circuitous routes.

Schedules filed containing proposed rates: D. Q. Marsh's I. C. C. No. 3752, supp. 384.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than ap-

plicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 49-10456; Filed, Dec. 27, 1949; 8:45 a. m.]

[4th Sec. Application 24746]

CITRUS FRUIT FROM FLORIDA TO NEW YORK, N. Y.

APPLICATION FOR RELIEF

DECEMBER 22, 1949.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for and on behalf of carriers parties to Agent C. A. Spaninger's tariff I. C. C. No. 642.

Commodities involved: Citrus fruits, carloads.

From: Points in Florida.

To: New York, N. Y.

Grounds for relief: Competition with water carriers, Competition with motor-water carriers.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 49-10457; Filed, Dec. 27, 1949; 8:45 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2271]

UNITED GAS CORP.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 21st day of December A. D. 1949.

United Gas Corporation ("United"), a gas utility subsidiary of Electric Bond and Share Company, a registered holding company, having filed an application and amendments thereto pursuant to the Public Utility Holding Company Act of 1935 particularly sections 9 (a), 10 (a) (1), 10 (b) and 10 (c) thereof with respect to the following proposed transactions:

United, through its wholly owned subsidiary, United Gas Pipe Line Company ("Pipe Line"), derives certain of its natural gas from the Carthage Field, Texas, and operates a plant for the recovery of liquid hydro-carbons from natural gas produced in that field. Chicago Corporation and Carthage Corporation, non-affiliates, also operate such plants and the three companies are the principal producers of straight-run motor fuel in that field. Triangle Refineries and Highland Oil Company are marketers of gasoline produced at the Carthage Field. The application states that it is necessary to improve the quality of motor fuel derived from the Carthage Field and that modern catalytic cracking equipment is necessary for this purpose.

Atlas Processing Company ("Atlas"), a Delaware corporation, has been organized for the purpose of acquiring and operating a plant located at Shreveport, Louisiana, together with related facilities, for the reforming and upgrading of straight-run gasoline produced by certain producers in the Carthage Field, for a base cash purchase price of $750,000. The plant and facilities after certain alterations will have a processing capacity of approximately 12,000 barrels of gasoline per day with a resulting calculated production of approximately 11,500 barrels of motor fuel having a minimum research octane rating of 83 for regular grade and 87 for premium grade.

The proposed capital structure of Atlas will consist of $700,000 principal amount of First Mortgage, five year, 4% Notes, $550,000 principal amount of Second Mortgage, five year, 4% Notes, and 10,000 shares of no par value common stock of an aggregate stated value of $50,000. United proposes to acquire $175,000 principal amount of the First Mortgage Notes, $137,500 principal amount of the Second Mortgage Notes and 2,500 shares of the common stock of Atlas for a total cash consideration of $325,000. Chicago Corporation, Carthage Corporation, and Triangle Refineries and Highland Oil Company jointly, each proposes to acquire $137,500 principal amount of the Second Mortgage Notes and 2,500 shares of the common stock of Atlas. The remainder of the First Mortgage Notes, amounting to $525,000, will be sold in the principal amount of $262,500 to the Second National Bank of Houston, Texas and in the principal amount of $262,500 to the First National Bank of Shreveport, Louisiana.

The application states that were Pipe Line to construct these facilities itself it would cost approximately $1,500,000 and that the proposed investment in Atlas makes available to Pipe Line the same capacity which it would have by construction of its own plant with a much lower investment.

Said application having been filed on November 22, 1949, amendments having been filed on December 2, 1949 and December 16, 1949, notice of said filing having been given in the form and manner required by Rule U-23 of the general rules and regulations promulgated pursuant to said act, and the Commission not having received a request for hearing within the time specified in said notice, or otherwise, and the Commission not having ordered a hearing thereon; and

The Commission observing with respect to the proposed transactions that the operations of Atlas, as above described, are sufficiently related to the business of United to permit our finding that the proposed acquisition of securities is not detrimental to the carrying out of the provisions of section 11 of the act, within the meaning of section 10 (c) (1), the Commission finding that the proposed transactions satisfy the other applicable sections of the act, and observing no basis for adverse findings under the provisions of section 10, and the Commission deeming it appropriate to grant the said application, as amended, and also deeming it appropriate to grant applicant's request that the order herein become effective forthwith upon its issuance:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of said act that the said application, as amended, be, and the same hereby is, granted, effective forthwith, subject to the terms and conditions contained in Rule U-24.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-10455; Filed, Dec. 27, 1949; 8:46 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 14099]

EMMA BOETTGER

In re: Debts owing to Emma Boettger. F-28-13444-A-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Emma Boettger, whose last known address is Hamburg 34, Hornerlandstr. 482 I, Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the property described as follows:

a. That certain debt or other obligation owing to Emma Boettger by the Chicago City Bank & Trust Company, Liquidating Trustee, 815 West 63d Street, Chicago 21, Illinois, in the amount of $350.50, as of December 31, 1945, repre-

senting a distributive share of proceeds of sale of trust property in Trust No. 2438, arising out of full liquidation of Certificate of Beneficial Interest numbered 15, for five (5) shares in said trust, and that certain cashier's check numbered 205702, dated December 18, 1940, drawn for payment thereof by the Trust Department of the aforesaid bank, payable to Emma Boettger, together with any and all rights to demand, enforce and collect the aforesaid debt or other obligation and all rights in, to and under, including particularly the right to possession and presentation for collection and payment of the aforesaid check,

b. That certain debt or other obligation owing to Emma Boettger, by the Chicago City Bank & Trust Company, Liquidating Trustee, 815 West 63rd Street, Chicago 21, Illinois, in the amount of $348.35, as of December 31, 1945, representing a distributive share of proceeds of sale of trust property in Trust No. 1968, arising out of full liquidation of Certificate of Beneficial Interest numbered 34, for five (5) shares in said trust, and that certain cashier's check, numbered 251304, dated November 4, 1942, drawn for payment thereof by the Trust Department of the aforesaid bank, payable to Emma Boettger, together with any and all rights to demand, enforce and collect the aforesaid debt or other obligation and all rights in to and under, including particularly the right to possession and presentation for collection and payment of the aforesaid check, and

c. That certain debt or other obligation owing to Emma Boettger, by the Chicago City Bank & Trust Company, Liquidating Trustee, 815 West 63rd Street, Chicago 21, Illinois, in the amount of $37.50 as of December 31, 1945, representing distribution of net income under Trust numbered 1968, and those three (3) Trustee's checks drawn for payment thereof by the aforesaid Liquidating Trustee, payable to Emma Boettger, numbered, dated and in the amounts as set forth below:

Numbe.	Date	Amount
24	May 3, 1941	$15.00
24	Nov. 3, 1941	12.50
23	May 4, 1942	10.00

together with any and all rights to demand, enforce and collect the aforesaid debt or other obligation and all rights in, to and under, including particularly the right to possession and presentation for collection and payment of the aforesaid checks,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on November 28, 1949.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

[F. R. Doc. 49-10468; Filed, Dec. 27, 1949; 8:47 a. m.]

[Vesting Order 14130]

KANITSU YAMAYA ET AL.

In re: Cash owned by Kanitsu Yamaya and others.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That the persons whose names are set forth in Exhibit A, attached hereto and by reference made a part hereof, each of whose last known address is Japan, are residents of Japan and nationals of a designated enemy country (Japan);

2. That the property described as follows: Cash in the sum of $5,940.31 presently in the possession of the Treasury Department of the United States and Trust Fund Account, Symbol 158915, "Deposits, Funds of Civilian Internees and Prisoners of War," in the names of the persons listed in said Exhibit A and in the amounts appearing opposite such names, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Japan);

and it is hereby determined:

3. That to the extent that the persons referred to in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on December 5, 1949.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Acting Director,
Office of Alien Property.

EXHIBIT A

Name	Amount	OAP File No.
Kanitsu Yamaya	$147.05	F-39-6614-E-1
Ryukichi Yasui	342.05	F-39-6615-E-1
Yotaro Yamamoto	220.00	F-39-6613-E-1
Koichi Watanabe	337.00	F-39-6612-E-1
Ginnosuke Wada	225.00	F-39-6611-E-1
Hiromi Uyemura	274.87	F-39-6610-E-1
Tsutomu Uyeda also known as Rutomu Uyeda	260.57	F-39-6609-E-1
Mitsugi Uyeda also known as Mitusugi Uyeda, as Mitzuge Ueda and as Mitsuya Ueda	151.60	F-39-6608-E-1
Hideo Henry Uga also known as Johnny Uga and as Henry John Uga	422.55	F-39-6607-E-1
Yosuke Tsuchida also known as Yosuke Frank Tsuchida	239.00	F-39-6606-E-1
Kusutaro Tanaka	213.90	F-39-6605-E-1
Juntaro Takeda also known as Junataro Takeda	149.00	F-39-6604-E-1
Kana Takara	308.50	F-39-6603-E-1
Nibachi Takahashi	205.05	F-39-6602-E-1
Kakutaro Suzuki	150.00	F-39-6601-E-1
Asakichi Suzuki	399.09	F-39-6600-E-1
Katsuhei Suko also known as Ben Suko	116.07	F-39-6599-E-1
Jintaro Shusho	227.93	F-39-6598-E-1
Aisuke Shigekuni	324.40	F-39-6597-E-1
Rokuji Shiba also known as Rokuji Shiva	227.67	F-39-6596-E-1
Naoki Sawada	123.60	F-39-6595-E-1
Masashige Sasaki also known as Lewis Sasaki	129.95	F-39-6594-E-1
Jinkichi Sakai	258.47	F-39-6593-E-1
Otomatsu Ryono	216.00	F-39-6592-E-1
Sadakichi Tanaka	210.99	F-39-6353-E-1

[F. R. Doc. 49-10469; Filed, Dec. 27, 1949; 8:48 a. m.]